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ABSTRACT

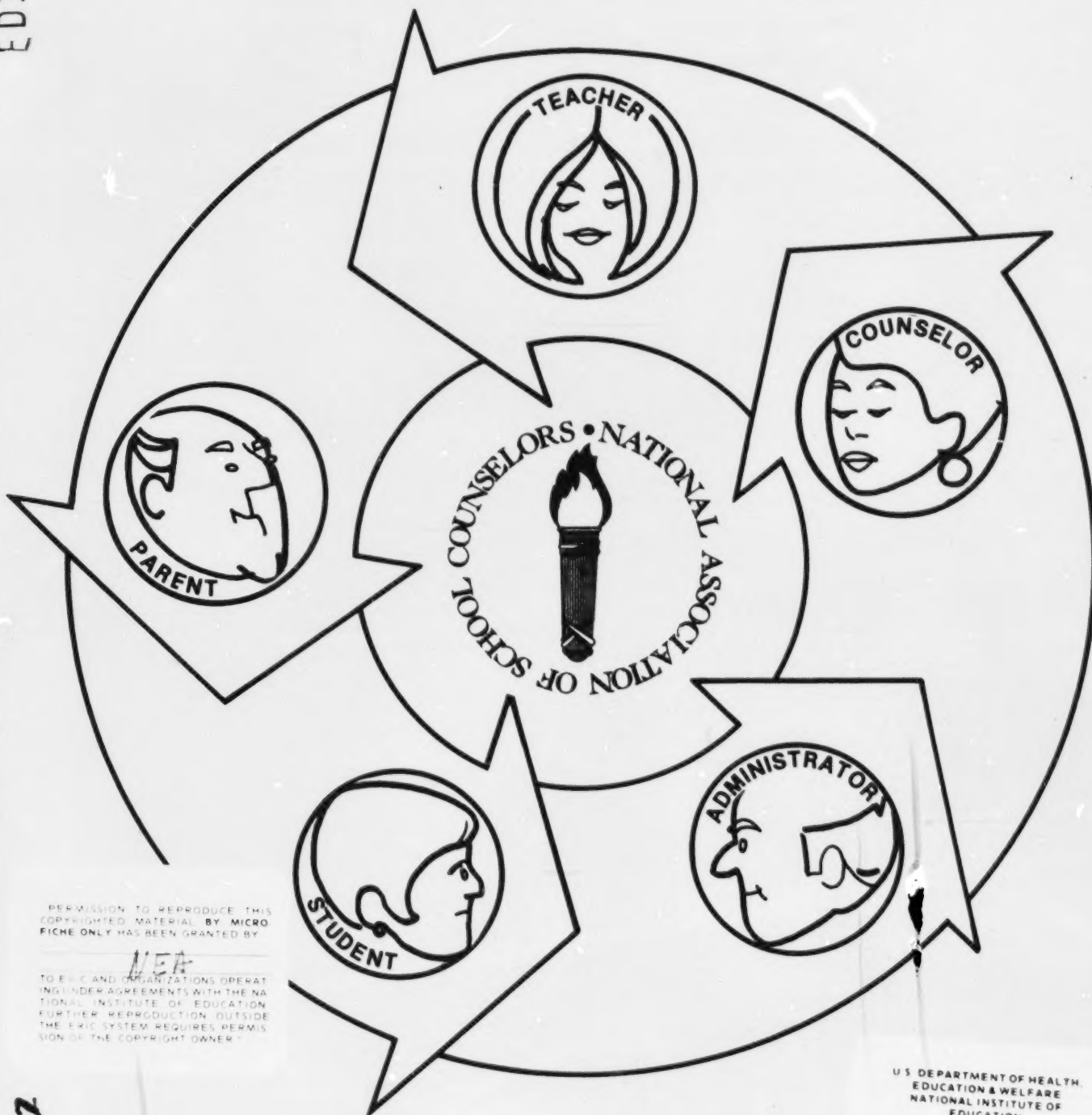
This handbook serves as a guide to counselors in helping them reinforce and/or change the image of the school counselor. It suggests the necessity for the counselor's becoming an active member in the negotiating unit of his school district's Teacher's Association, and lists many activities which will make the school and community aware of the counselor and what he can contribute. The guide includes a lengthy section on negotiating techniques. In addition, it contains a five-page job description for counselors, a discussion of layoffs and how to handle the problems that result from them, as well as an explanation of C.A.T., Counselor Alert Team. (PFS)

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THE COUNSELOR AND NEGOTIATIONS

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THE COUNSELOR AND NEGOTIATIONS

TABLE OF CONTENTS

	PAGE
NEGOTIATIONS HANDBOOK	1
JOB DESCRIPTION FOR COUNSELORS	23
LAYOFFS	30
COUNSELOR ALERT TEAM (C.A.T.)	44

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NEGOTIATIONS HANDBOOK



THE SCHOOL COUNSELOR AND NEGOTIATIONS

In our nation's schools the child's welfare is at stake at the negotiating table. The school counselor, as a member of the educational team, is closely allied with teachers and for this reason should be associated with them in negotiations.

Negotiations is a process which consists of a dialogue and bilateral decision making between two parties in order to come to a contractual agreement. The counselor's major objective in negotiations should be helping the child meet his developing needs. An effective counseling service is essential to the school community and must be guaranteed through negotiations. The role and services of the counselor, as determined by him, should be an integral part of any negotiated contract.

You as a counselor must become an active member in the negotiating unit of your school (in most cases with the Teacher's Association). You must establish representation on the contract committee or preliminary committees and better yet on the negotiating team. It is essential that you establish objectives and priorities and draw up proposals with supportive rationale. Most importantly, you must become ACTIVE, get out and broadcast the good news that you are alive and anxious to serve youth! Believe it and do it. The welfare of youth should be uppermost in you mind when you establish your goals and objectives. Through negotiations it will be realized that it is the child who benefits from an affective counseling program.

ACTION GUIDELINES

The following activities will prove useful in helping reinforce and/or change the School Counselor image. The items presented are merely guidelines and are intended to be used to meet local needs and they do not exhaust approaches that can be utilized to aid you in negotiations and formulation of rationale. Since you are the expert regarding local needs and interest, the expansion and implementation of these guidelines is best served through the individual counselor's imagination, productivity and creativeness.

COUNSELOR Needs to be Involved

1. Become an active member in your local, state and national Counselor-Teacher Professional Organization.
2. Become a member of the negotiation team or support committees in your local bargaining unit.
3. Publish a continuous communications network with your neighboring school system.
4. Become an involved working member in curriculum development and in standing committees in your school.

5. Organize and maintain a Guidance Advisory Committee (membership should include students, parents, teachers and administrators.)
6. Establish a philosophy for your department which includes short term objectives and long term goals with Counselor Accountability Guidelines.

Approach I - Studying Response

1. Gather information on how students, parents, teachers, administrators and the general public view school counselors. (use self-evaluative instruments in reaching this objective).

Approach II - Improving Counselor Image or Changing Misconceptions or Reinforcing Better Understanding

1. Get the word out - "What YOU are all about"
2. Use printed material such as newspaper articles, question and answers, feature articles and gain support of local newspapers.
3. Make use of the radio and television.
4. Contact various organization program committees and provide packaged programs on the role of the school counselor and his activities.
5. Set up a counselor information station or booth in publicly frequented areas, such as shopping plazas, banks or libraries, to offer a community awareness.
6. Set up rap sessions with students.
7. Attend teacher departmental meetings.
8. Obtain representation on administrative council.
9. Introduce to the Board of Education policy items for consideration such as confidentiality.
10. Provide information or brief reports for school meetings on a regular basis and arrange informal meetings with them.
11. Provide an orientation program for new teachers.

Approach III - Political Action

1. Work with established legislative committees of teacher and counselor associations - local, state and national.
2. Write directly to legislators and support or suggest legislation.
3. Meet with local legislators and acquaint them with school counseling concerns as they relate to student needs.

Approach IV - Sharing of Professional Practices

1. Share techniques on how basic objectives are being accomplished through an Information Exchange with other school counselors via articles in newsletters or professional journals.
2. Participate in workshops or rap sessions with professional colleagues.

PROCEDURAL GUIDELINES FOR NEGOTIATIONS

Local Level

1. The school counselors should establish a Committee on Negotiations.
 - a. The committee should review present contracts, board policies and state laws regulating negotiations.
 - b. A survey should be made of area schools to determine what they have done in terms of negotiations.
 - c. The main emphasis should be on those areas which provide better services to students.
2. At this point the committee should make a list of items for negotiations. Some negotiable items are:
 - a. Terms and conditions of employment - i.e., to insure effectiveness in role as counselor, beware of infringement on counselor time, state no extra duties such as bus, corridor, study hall, substitute teaching, cafeteria supervision.
 - b. Number of counselors on the elementary, middle, junior high and senior high school levels. - i.e. ratio per teacher, student, families and/or according to responsibilities.
 - c. Differentiated compensation for additional time spent beyond the regular school day or year. - i.e., extended school day, evening hours, extended school year, summer employment.
 - d. Clerical assistance. - i.e. secretaries, clerical aids or assistance.
 - e. Physical facilities and materials. - i.e. offices, conference or group rooms, phone, equipment, resource materials.
 - f. Professional advancement. - i.e. consultants, in-service education, conferences and workshops, professional association activities.
 - g. Policy on confidentiality. - i.e., confidential records on students, locked files, counseling procedures.
 - h. Evaluation of counselors, i.e.
 1. by whom (pupil personnel coordinator, director, department chairman)
 2. how evaluated (tapes, interview, observation)
 3. how frequently.
 - i. Certification. - i.e., guarantee staff be composed only of certified school counselors, suitable clerical assistance and student interns.

3. The items to be negotiated should now be written in the form of proposals with appropriate contract wording.
 - a. For each item negotiated, the counselor committee should develop a rationale for presentation to the local negotiating team.
 - b. Unsatisfactory present contract conditions should be negotiated out.
 - c. Study your proposals and evaluate fully what they mean and their economic impact.
 - d. All proposals should be incorporated into the general articles of the contract and not in a separate section for counselors where these items might be more vulnerable.
4. In preparing rationale for economic matters, consider these guidelines:
 - a. Study the employer's wage structure over a period of years.
 - b. Determine salaries in surrounding areas and comparable sized schools.
 - c. Use only statistics from comparable schools in your area.
5. Wording on contract proposals is extremely important:
 - a. The agreement should be worded to favor your position.
 - b. Contract terms must be accorded their first and customary meanings.
 - c. The written contract is presumed to be final.
 - d. Failure to include a term is proof that it was intended to be omitted.
 - e. Every comma, semicolon, underline or italicized word is important as is sentence structure.
6. Avoid terminology such as:
 - a. "Whenever possible" or "wherever possible."
 - b. "Will or may" and use "shall or must."
 - c. "The Board of Education will make every effort" or "The Board of Education will make every reasonable effort."
7. Submitting your proposals to your local negotiating team:
 - a. Submit all proposals in typewritten form.
 - b. Produce sufficient copies for all parties concerned.
 - c. Submit rationale to support each of your proposals; also submit necessary data to support your position (survey results, cost data, evaluations of local programs).
 - d. Arrange for your committee to meet with your local negotiating team to explain your proposals and clarify all points.
 - e. Keep in touch with the negotiating team regarding progress of negotiations. Your committee should be prepared to go to the negotiating table, if called upon by your local unit, to answer questions regarding your proposals.
8. Do your homework, be prepared and know the information on the following page.

- A. THE PROFILE OF YOUR DISTRICT
 - 1. Pupil population
 - 2. Number of school buildings
 - 3. Number of teachers
 - 4. Number of administrators
 - 5. Nature of community
- B. YOUR NEGOTIATIONS TEAM EFFORT
 - 1. When they started
 - 2. Number of meetings
- C. ITEMS AGREED UPON
 - 1. Past practices
 - 2. Concessions
- D. ITEMS IDENTIFIED AS DISPUTABLE
- E. CATEGORICAL ISSUES
 - 1. Economic
 - a. Salary
 - b. Fringe benefits
 - c. Counseling load
 - 2. Non-Economic
 - a. Counselor role in policy
 - b. Counselor meetings - Length frequency
 - c. Grievance procedure
 - d. Use of facilities
 - 3. Items whose negotiability is questioned
- F. STATISTICAL INFORMATION
 - 1. Operating budget
 - 2. Cost of economic items demanded and offered
 - 3. Cost of economic items already granted
 - 4. Gross budget increased - by demands and offers
 - 5. Impact on true tax rate demands and offers
 - 6. Impact of changes in state aid and district revenues
- G. CRITERIA ON WHICH RECOMMENDATIONS ARE BASED
 - 1. Impact on Educational Program - Will it improve program?
Will you gain teachers support?
 - 2. Equity-What is increase to others; Are all groups treated alike?
 - 3. Feasibility- Is demand practical?
 - 4. Comparable standard- Salary schedules of other districts; policies of other districts.
 - 5. Future implications
 - 6. Ability of school district to finance your proposals.

STATE LEVEL

1. The state professional counselor association president should appoint a committee on negotiations with its members representing geographical areas of the state.
 - a. They should engage resource people who may be called upon for assistance to represent school counselors in statewide negotiations process.
 - b. They should survey local systems of present status of needs and negotiations problems.
 - c. They should serve as a liaison with professional organizations.
 - d. They should initiate legislation relative to counselor concerns.
 - e. They should attend national professional organization workshops on negotiations.
 - f. They should survey legal aspects of negotiations and will prepare guidelines to be used within the state by local organizations.
 - g. They will provide legal advice and assistance to local organizations through state organizations.
2. State associations should sponsor regional workshops on negotiations for local organization committee leaders.
3. The state association should sponsor a statewide public relations campaign.
4. The state association should budget money for negotiation activities.

EXAMPLE OF STATE ORGANIZATION

GUIDELINES FOR NEGOTIATION PROCEDURES

1. Local Level

Counselors should form a local School Counselors Association (SCA) and affiliate with state organizations.

The objectives of the organization should include professionalism, in-service training, and negotiations.

Memberships requirements for SCA should parallel state membership structure.

The amount of local membership fees should be left to local needs, but the fees should be adequate to pay committee and officer expenses.

Efforts should be made to require local school districts to withhold payroll deductions for professional membership dues including: local, state, and national organizations.

Local organizational structure should parallel state and have similar committees and positions within the executive bodies where feasible. A committee on negotiations should be appointed with instructions that the following recommendations serve as guidelines:

There should be an immediate analysis of board policies and state law relative to negotiations with local school boards.

A list of negotiable items should be prepared and put in order of importance for negotiations.

A counselor should be a member of all negotiation teams to represent counselor concerns.

When a local SCA desires to work within the framework of the Local Teachers Association but would like additional support, contact the state association representative for assistance.

Where local participation is not deemed desirable, or when local actions are not responsive to counselor needs, contact the state representative for assistance.

2. Area Level

The state SCA representative is responsible for liaison between state individual members within his region and the SCA State Level organization. The SCA Region Representative is responsible for the communications of problems from the local SCA organizations and the state level organization. To facilitate the handling of negotiation problems within a SCA Region, the regional representative should appoint a Counselor Alert Team (C.A.T.)

The C.A.T. should include members from local SCA's.

Where no local SCA's are organized, individual SCA members representing regional areas should be included.

Other SCA members such as county and/or state officials should be encouraged to participate when available.

The C.A.T. serves as advisory function to the regional representatives, local SCA and individual SCA members. Upon receipt of a list of questions or statements which delineate the nature of the problem, the regional representative will direct one C.A.T. to assemble and determine a course of action.

The C.A.T. will provide on-site assistance when needed and requested in writing by a local SCA or by an individual SCA member. When deemed necessary, the SCA Regional Representative will call upon the SCA Negotiations Committee for assistance.

3. State Level

The SCA President will appoint a Negotiations Committee. The SCA Negotiations Committee will include a chairman, and a representative from each of the SCA Area Alert Teams. The SCA Negotiations Committee will serve in an advisory function. The SCA Negotiations Committee will provide workshops and in-service training for SCA Counselor Alert Teams.

COMMUNICATION CHANNELS FOR SCA NEGOTIATIONS

- | | |
|---------------------------------|---|
| A - Individual SCA Member | |
| B - Local SCA Organization | Negotiations Committee
(or Professional Standards Committee, etc.) |
| C - SCA Regional Representative | SCA Area Alert Team |
| D - SCA Negotiations Committee | |

Guidelines for Counselor Alert Teams

1. FUNCTION

The Counselor Alert Team (CAT) serves in an advisory capacity to SCA local level organizations within its area. Where a local level organization does not exist, the CAT serves in an advisory capacity to individual SCA members.

2. TEAM OPERATIONS

Upon receipt of a written request for assistance, the regional representative will call together the CAT to determine a course of action. A CAT Field Observer will be dispatched for an on-site inquiry, if deemed necessary. Individual CAT members may be sent to the site of the problem to assist in the realm of their specialty; or if deemed necessary, the entire team will be sent as a unit. The observations and findings of team members should be summarized into a brief written statement.

3. ROLES OF TEAM MEMBERS

The Team Leader:

- Coordinates the activities of the team;
- Maintains liaison with regional representatives;
- Supervises the preparation of written reports;
- Serves on the SCA Negotiations Committee.

The Legal Specialist:

- Reviews legal district policies
- Reviews board code and state revised codes
- Reviews Attorney General Office opinions
- Reviews court cases
- Prepares written summaries of findings.
- Other

GUIDELINES FOR COUNSELOR ALERT TEAMS (Cont'd)

Organizations and Operations Specialist

- Reviews operation of local organization;
- Studies effectiveness of local organization;
- Reviews communication channels and staff relationships;
- Reviews local organizations' bylaws;
- Assists local organization with position paper if necessary;
- Prepares written summaries of findings; and
- Others

Policy Specialist

- Reviews national policy statements on organization and negotiations;
- Reviews state policy statements on organization and negotiations;
- Maintains liaison with negotiation committees at all levels;
- Reviews position statements and/or policy statements of other professional organizations; and
- Others

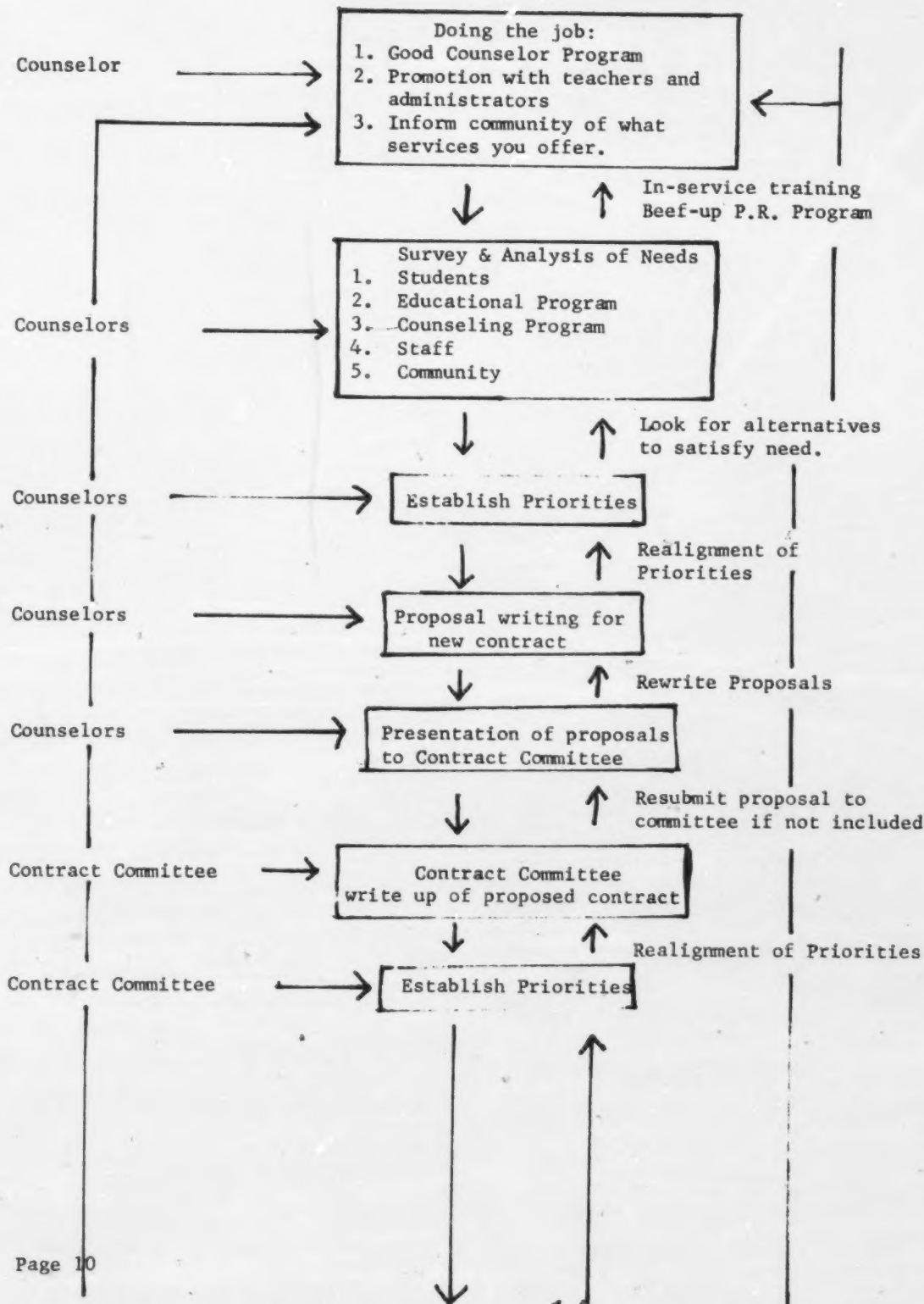
Field Observers and Reporters

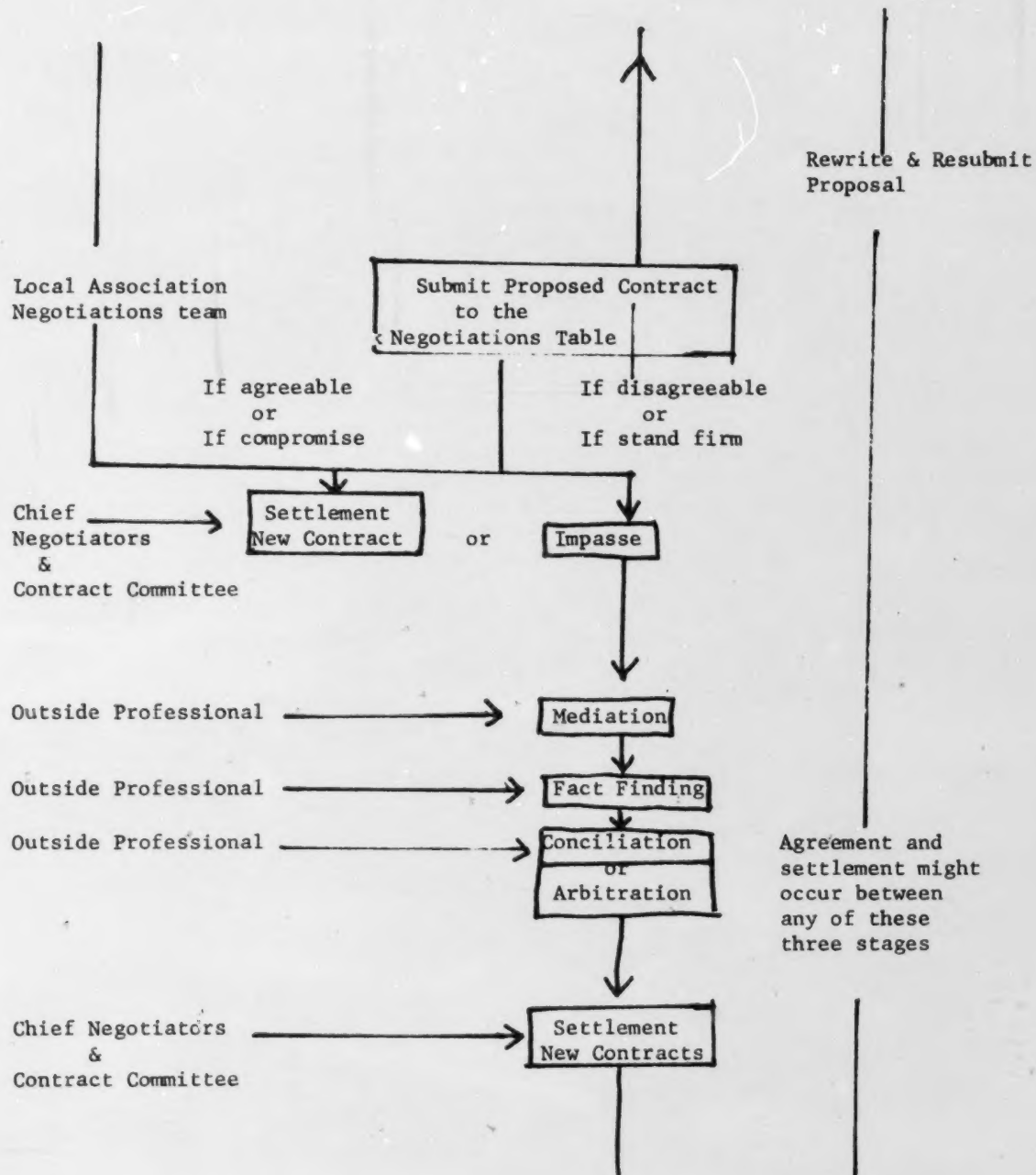
- Makes on-site observations;
- Reports findings to other team members; and
- Prepares written summaries of findings.

FLOW OF NEGOTIATIONS PROCESS

DONE BY:

IF STUMBLING
BLOCKS OCCUR:





GUIDELINES FOR THE COUNSELOR WHO PARTICIPATES ON THE LOCAL DISTRICT NEGOTIATIONS TEAM

1. Formulating proposals — scope of negotiable items

- (a) Teacher Participation --- Consideration must be given to needs and problems of the total faculty, not just a few. Use a written survey to find the real concerns. Sift the information and select the real negotiable items of concern to the educational staff, not just the negotiating team. Attitudes about issues must be analyzed before putting them in a package. Keep close to the membership through building meetings, small coffee hours, and informal gatherings in homes. If you have a package the teachers can buy, they will support you.
- (b) Soundly Based But Leaving Room for Compromise --- The proposal must be sound. Establish your priorities. In broad terms - don't "lock yourself in." The membership should understand that there may be need to sacrifice one item to get another more important one, but getting the item before the board makes negotiable at a future date. Leave room for compromise. Usually propose more than you intend to get, but be able to defend every proposal. Data revealed during the negotiation process by the board may put a different light on some issues. Stand firm on your proposals but be prepared to lose one battle occasionally in order to win the war.
- (c) Comprehensive Agreement --- The package should contain economic and non-economic items. Resolving some of the non-economic items may be just as important to the membership as salaries. The American Association of School Administrators' list of negotiable items is a somewhat comprehensive and useful guide in developing a proposal.
"The AASA believes negotiation, in good faith, may well encompass all or some aspects of policy governing such items as:

- Curriculum
- Inservice education
- Personnel policies
- Teaching assignments
- Transfers and promotions
- Recruitment of teachers
- Discharge and discipline of teachers
- Provision of physical facilities for teachers
- Grievance procedures
- Recognition of the negotiating team
- Lunch and rest periods
- Salaries and wages
- Welfare benefits
- Class size
- Leaves of absence
- Expiration date of negotiation agreement
- other mutually agreed-upon matters which directly affect the quality of the educational program."

A comprehensive proposal, well prepared with supporting data and philosophy, is essential and impressive. The quality of the material therein should be tops. Include proposals dealing with educational improvement unrelated to teacher welfare even though they may be questionable are negative items. Sell the board the idea that the document should reflect an advertisement of the school system -- good things that make it a desirable place to teach.

- (d) Community Reaction --- If the issues are real and the package proposal is devised to promote a quality education program for children, the public will buy it. The public and the teachers must have a clear-cut understanding of what things teachers are fighting for. Such a platform is needed for political reasons. It need not be presented in detail (e.g., full salary schedule, how teacher aides operate, etc.), but should be clear-cut and easily understood. The public needs to understand early the economic and non-economic aspects of the proposal, and what it does for children. Be sure to use a summary of contract for newspaper publication later, if necessary.

2. Presenting Proposals to the Board Team

- (a) Establish ground rules if this seems to be desirable but do not have too many rules. Don't be led into a position where all you are doing is bickering over how to proceed. Just proceed! Be agreeable. You can afford to be flexible as long as this leads you to the issues. Don't give up basic rights. Stand firm if you see it interfering at a later date with progress.
- (b) Use the first meeting to establish rapport, a good climate, understanding of goals, idea of equality of teachers with board, feeling of responsibility, and the creation of a problem-solving atmosphere. Take the initiative to establish your position. If presenting proposals to a conservative board, bend over backwards to establish rapport. Let them have their day if need be -- there is plenty of time for argument. Show them you are reasonable people. Be firm but not antagonistic. Remember you may be dealing with these people for a long period of time. You can't afford to present a hostile attitude at the first meeting, but you must get their attention.
- (c) Submission of Proposals --- Whenever proposals are presented, explain how they were developed, what they would do, and why they are important. In other words, establish the intent, form and substance of your proposals. Have all available facts and information at your disposal. Know how far you can go and when to compromise. If the board does not view favorable your proposals, then discover the reasons for this attitude. Once the reasons are known, it is possible for you to present your proposal again in a way designed to lead the board to change its position. The methods used in this process should be selected very carefully. Mistakes can not only make the board more firm in their position but may create further problems.
- (d) Do not submit your proposal in advance; since this gives the board the advantage. It loses its shock value (size and weight of typed proposals), and it gives the opposition time for discussion, picking out vulnerable spots and strategy planning. Take your proposal with you to the first meeting.
- (e) At the second meeting go through the proposal with them, item by item. Look for items that can be settled easily. Bypass the hard ones until later. Take the broad comprehensive approach. Insist that the contract be considered as a whole piece of cloth. Concentrate on non-economic items -- quality education. Justify your reasons for including items. If the salary item is a "hot issue" put the emphasis on textbooks or items that focus attention on children's welfare.
- (f) Establish an understanding that your proposals are forthright and justifiable and that you intend to pursue your goals.

3. Negotiating timetables and specified meeting dates

- (a) Reaffirm about the need for frequent meetings. Avoid trying to negotiate at regular meetings of the board. Be prepared to set aside blocks of time once negotiations get underway. There should be no need to string out negotiations for any long periods of time.
- (b) Use your judgment as to where to meet -- natural ground or board room. The informal atmosphere of a motel in "Tough" cases is sometimes more desirable than the formal board room setting. However, don't get hung up on location of the meeting place.
- (c) Set a specific date for the next meeting before leaving any given meeting. Don't leave next meeting to chance.
- (d) Place items on the table as logic dictates, normally putting non-economic and some easy-to-get items first. Leave the tough issues for another "Shot" later -- after you have been able to assess the board's views, attitudes, prejudices and weaknesses.
- (e) Take into consideration deadlines for budget submission, calendar approval, etc.

4. Executive session and press statements

- (a) At the outset, seek private sessions. Get to know whom you are dealing with both your own team and the school board team. Calm, reasonable discussion works well in executive sessions.
- (b) If the board team insists on open meetings, play to the public. Focus debates on those issues which will gain public sympathy. They may well want to revert to the executive session.
- (c) Be flexible in relation to the press. You may suggest that you do not intend to release specific material as long as negotiations are fruitful, but do not commit yourself to this. In short, remain a free agent. Do not agree that releases will not be given out without the other side's consent. Reserve the right to speak out to the public when it serves your purpose. You may, as a courtesy, wish to notify the other side before issuing a release but do not agree to do so.

5. Attitude and conduct of negotiators

- (a) Your attitude tells more sometimes than your words. Be reasonable, responsible and professional.
- (b) Avoid loss of temper. Control your emotions. Don't argue. Remember, you are seeking to gain an agreement, not to win an argument.
- (c) Righteous indignation is justifiable in a controlled escalation.
- (d) Avoid pointing of finger at personalities. Speak for the association and to the association and board team.

6. Formal and informal negotiations

- (a) Formal negotiation is done at the table; informal negotiation may be "back-room" sessions where a deal is hammered out.

6. (b) The chief negotiator should advise his team of "behind-the-scenes" meetings, although good judgment and taste may require a confidentiality of details. Keep a united front. Don't let the board team divide loyalties by playing one association team member against another.
(c) "Behind-the-scenes" agreements are subject to approval of other members of the team.
7. Use of caucus
 - (a) Plan this as part of regular practice for negotiations.
 - (b) Use the caucus to reunite forces. Avoid letting opposition get any idea of disagreements among team members.
 - (c) Use the caucus as a strategy move -- make opposition think an issue has troubled you. This gives them the feeling of having the wrong point. They then may be easier to deal with next time.
8. Use of study committee
 - (a) Whenever the two sides cannot agree on a proposal, and negotiations will obviously be stalled, a study committee during negotiations may be useful.
 - (b) However, be aware that the many items or referrals may really be a way of bypassing true negotiations.
9. Use of United Teaching Profession field staff and other professional advisors
 - (a) Do not waive right to use resources of your state association staff or other persons without board approval. Get the facts! Don't wait until you are in a hole to call them in to a negotiation session.
 - (b) When necessary, seek professional and legal advice from the United Teaching Profession (UTP) and know your rights and your responsibilities. Be prepared.
 - (c) Outside help will probably be needed at some time. Get the expert. An expert impresses the board, if he really knows what he is talking about and presents it in clear, concise language.
10. Written confirmation of agreed items
 - (a) Keep notes on items agreed upon. This will regularize relations and provide a readily accessible record so everyone knows where he stands.
 - (b) Outline the main items of the agreement before the final contract is signed.
 - (c) Finalizing Agreement --- When final agreement is reached on all proposals, the negotiation committee should prepare a statement setting forth the details of the agreements reached. Both parties should then recommend approval to members of their respective groups. In doing this, learn to turn achievements, even minor ones, into victories. Both sides must agree to stand by their promises to each other. There must not be repudiation of agreements made at the table.

11. Role of superintendent and administrative staff

- (a) You are entitled to negotiate with someone who has authority to make an agreement. If the superintendent becomes the negotiator for the board, you may be at an advantage since you will be dealing with one person. If he is only the intermediary and becomes the errand boy for the board, there is a loss of advantage for the association. Insist that those present at the table be the ones who can bind the groups to the limit of good faith and the law. Be firm on this but be careful not to overdo it.
- (b) The superintendent may try to act as an advisor to both sides. Remember, he is the board's man.
- (c) There are only two parties at the table. The contract binds the board and the recognized organization.

NEGOTIATIONS AND THE COUNSELOR

GENERAL STATEMENT

THIS STATEMENT IS NOT MEANT TO BE DETAILED OR EXHAUSTIVE. IT IS FELT THAT LOCAL CONDITIONS MAY REQUIRE THAT THE RECOMMENDATIONS BE ADOPTED TO SPECIAL SITUATIONS

We believe that the role and function of guidance personnel are most closely allied to those of teachers. We feel, then, that they should be associated with the instructional staff in contract negotiations. However, there are certain conditions which should be noted in order for them to function most efficiently. In some of the larger districts, where guidance personnel are present in large numbers, they have chosen to form their own negotiating unit.

LENGTH OF DAY - LENGTH OF YEAR

School schedules are very crowded these days. Students are involved in many activities during and after the school day. It is often impossible to see pupils except at specific times. Parents are vitally involved in decisions regarding the pupils' present and future plans. Many parents are not available for consultation during the school day.

Full scale summer schools are being conducted in many districts which enroll large numbers of pupils who need guidance assistance.

More and more pupils with special needs are requiring attention from the guidance staff to ensure their maximum success in the school program. Underachievers, potential dropouts, students needing part-time or summer work, potential drug abusers, and disadvantaged pupils are some of these.

Followup and evaluation studies are also necessary to assure that guidance programs improvements are brought about.

Review of pupil programs to suggest changes of summer school registration needs to be accomplished for many pupils immediately after school closes in June and before the fall semester begins. This is imperative to the smooth operation of the schedule and saves much instructional time for both pupil and teacher in September.

For these reasons we recommend that:

- When possible, counselors work longer school day than instructional staff.
- That regular evening hours be scheduled to make it possible for parents and pupils to meet the counselor together.
- That summer employment of counselors be a regular part of the school program.

ASSIGNMENT OF EXTRA DUTIES

Since counselors should see pupils when they have free time such as before school, or during lunch periods, counselors should be free at these times. Counselors need also to be able to maintain proper rapport with students in order to counsel them. We recommend that:

- Counselors not be assigned to supervisory duties at the above times.
- That at no time they be placed in situations where they must administer discipline.

It is also recommended that: Counselors have time to circulate informally among pupils to observe their reactions in social situations.

Counselors may be compensated in addition to their regular pay if they are required to spend extra hours or extra days in the performance of their work. The amount of compensation should be determined on hourly or daily basis in line with their current salary.

PAY DIFFERENTIAL

Additional salary paid to counselors for time assigned beyond that required of teachers is not, in our opinion, a true pay differential.

Counselors are, however, often required to assume special responsibilities for interpreting school policy. They represent the school in many ways in the community. They are called upon to assist and advise in policy making.

To become certified, counselors frequently have to study and earn a second masters degree. Many school districts recognize these special requirements and responsibilities by giving guidance staff a differential in pay. This is sometimes expressed as an index or as a flat sum. Whenever this is done, no distinction should be made between elementary, junior high, or high school counselors.

ADMINISTRATIVE DUTIES

Over the years certain administrative and clerical functions have in some school districts been shifted to guidance. Whenever this has happened, the guidance program has suffered and services to pupils, parents, and teachers have been curtailed. Performance of these functions has given the general public an erroneous image of the function of guidance. Some of these improper functions are:

- Issuing and managing report cards
- Constructing the master schedule
- Issuing transcripts
- Arranging class sections
- Substituting for absent teachers
- Maintaining the legal achievement records of students

Increasingly, districts are installing a competent clerical worker in the administrative office who registers all students, keeps all records up-to-date, and issues all transcripts.

Counselors are responsible for establishing and maintaining a record of the educational and occupational development of pupils and their projected future plans. These records, however, are separate from the legal achievement records which are an administrative responsibility. We then command that:

- Student achievement records and report cards be managed apart from the guidance office and be available to guidance staff only as they need them to perform a guidance function.
- Administrative duties not be assigned to counselors.

PUPIL-COUNSELOR RATIOS

Local conditions affect greatly the proper ratios of pupils per counselor. For instance, in some disadvantaged areas where pupils have many special needs, a ratio of 75 pupils to 1 counselor might be too high. However, in the average community where pupils have normal needs we recommend that:

- The ratio of 250 to 350 pupils to each full time counselor in both junior and senior high school.
- The elementary school ratio may be higher (400-600). Elementary school counselors should be assigned to but one building if at all possible.

These ratios are based on the assumption that adequate clerical assistance is provided and that counselors are not assigned to the type of functions mentioned in the section on "administrative duties."

CLERICAL AND PARAPROFESSIONAL ASSISTANCE

Performance of routine clerical chores is not a good use of any professional's time. Adequate and competent clerical assistance can greatly increase the amount of time the guidance staff has available for activities vitally affecting the development of young people. Under normal conditions and if administrative work has not been assigned to the guidance office, we recommend:

- One secretary or competent clerical worker for every three counselors
- No guidance office, however small, should be without one secretary-receptionist for the full school day.

Paraprofessionals who have specialized training in the functions they are assigned should be employed where practicable.

CONFIDENTIALITY

Pupil personnel workers have not as yet legally been granted rights of privileged communication. Counselors, to maintain counseling relationships with pupils, may use reasonable judgement in regard to the information they report to parents or school authorities. A confidential relationship protects the rights and privileges of pupils and parents and makes counseling possible in delicate situations. All members of the school community should understand any limitations that will be applied to this relationship. We recommend that:

- Counselors and all staff be supported by a written board policy on confidentiality.

INVOLVEMENT IN CURRICULUM

Guidance people are in an excellent position to know pupil needs in the area of curriculum. They are aware, because of their contact with parents, employers, pupils, teachers and college personnel, of trends, requirements, and performances of all interested persons. Their role, however, is as a curriculum advisor, not a curriculum maker. Their object is to guide a pupil toward a learning situation which best meets his needs and where he can be challenged, yet meet with success. The guidance program must support and enhance the effectiveness of the educational program. We recommend that:

- Guidance personnel be involved in curriculum planning on a regular basis by serving on curriculum committees.

TEACHER RELATIONS

Much of the misunderstanding and criticism of the guidance program stems from lack of communication between guidance and teaching staffs. We recommend that:

- The guidance staff be allotted time regularly for planning with teachers to develop guidance activities and objectives.
- The guidance staff be allotted time to conduct inservice workshops for new teaching personnel.

SUPERVISION OF GUIDANCE

A director or chairman should be appointed and allowed sufficient time to supervise and coordinate the program effectively.

GUIDANCE MATERIALS, EQUIPMENT, FACILITIES, AND TIME FOR GROUP WORK

Often guidance programs have been expected to operate in makeshift facilities using materials and equipment borrowed from other departments.

There is a need to budget specifically to meet the needs of a planned program using materials (up-to-date) and visual equipment designed to display and use these materials for the maximum benefit of students planning their future.

Display and storage space, rooms designed to guidance for all types of group meetings are very essential to an effective program. A proper reception room, space for clerical workers as well as private, well-ventilated and well-lighted counseling rooms for guidance staff are also a necessity.

Regular group meetings with pupils are an essential part of a well-balanced guidance program. Such meetings should not have to be arranged or "stolen" from class time. A regular time must be provided for in the school day for the conduct of these groups.

REPRESENTATION

Because of the special needs of the guidance program as set forth above, we recommend that:

- Representation be considered for the guidance staff at all administrative meetings by a person qualified to interpret the special interests and concerns of this group as they relate to more effective ways of serving pupils.
- Representation should be provided for the guidance staff on the negotiating team or its immediate advisory board.

STUDENT DISCIPLINE

Contract Language -

A. Board Support and Assistance

The board recognizes its responsibility to give all reasonable support and assistance to employees with respect to the maintenance of control and discipline in the classroom. The board recognizes that the employee may not, fairly be expected to assume the ongoing responsibility for psychotherapy. Whenever it appears that a particular pupil requires the attention of special employees, special counselors, social workers, law enforcement, personnel, physicians or other professional persons, the board will take reasonable steps to assist the employee with respect to such pupils.

B. Conference

When, in the judgment of the teacher, a student requires the attention of the principal, assistant principal, counselor, psychologist, physician or other specialist, he shall so inform his principal or immediate supervisor. The principal or immediate supervisor shall arrange as soon as possible for a conference among him/herself, the teacher, and an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution.

C. Suspension

When, in the judgment of the teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may suspend said student for the remainder of the day and for up to one additional day. In such case the teacher, as promptly as his teaching obligation will allow, shall furnish the principal full particulars of the incident in writing.

1. An elementary pupil suspended under the provisions of this section shall not be readmitted during the half day in which the pupil was removed.
2. A secondary pupil suspended under the provisions of this section shall not be readmitted into that teacher's class during the day in which the pupil was removed.

D. Suspension or Expulsion

Disobedience of any order of a teacher, peace officer, school security officer, or any school authority when such disobedience can reasonably be anticipated to result in disorder, disruption or interference with the operation of any public school or substantial and material infringement upon or invasion of the rights of others are grounds for suspension or expulsion.

E. Physical Force

While in the course of his employment, an instructor may use physical force against a pupil to protect himself, to protect other persons, to prevent the destruction of property, or to prevent any illegal overt act on the part of the pupil. Such assault shall be reported to the building principal and other authorities immediately.

F. Corporal Punishment Policy

A written statement by the Board, governing use of corporal punishment of pupils, shall be distributed to all employees no later than the first week of each school term. (Note: If the school district has no board policy on corporal punishment, such a policy should be written and adopted by the board).

RATIONALE

Occasionally, a student or students will misbehave to the degree that they make it impossible for either themselves or others to learn. When this situation arises the employee should have the right to exclude that student or students from the classroom. The employee should be the prime determiner as to when or if the student will be allowed to return to class.

Sometimes the relationship between the employee and the student is so damaged that in the employee's judgment the student should not be allowed to return to the class because of the educational consequences. Students who are identified as chronic disruptive students should be provided with special professional help in order for them to resolve their difficulties or problems. In line with the philosophy of meeting the needs of each individual, the disruptive student may need a program of testing, diagnosis, and remediation specially tailored to his needs. The school may have to provide special scheduling and set up a unique program.

When the student has progressed to the point where he/she is ready to participate in group education, the student should be returned to the regular school program. Employees are concerned that a disruptive student should not be allowed to take from other students their right to an education. Likewise, the article recognized the need to help the student to understand himself and control his/her behavior. It is absolutely imperative that the teachers have the right to readmit students to their classes, and that students understand that exclusion from class on Monday does not mean a "hero's welcome" on Tuesday.

JOB DESCRIPTION FOR SCHOOL COUNSELORS



JOB DESCRIPTION FOR SCHOOL COUNSELORS

INTRODUCTION

The job description of the school counselor is primarily designed to help educators understand the conditions under which school counselors can make their greatest contributions to educational excellence. Ultimately the sole justification for the presence of the school counselor is that their work contributes directly to both the specific and broad purposes of education.

Educational excellence requires teamwork. The unique contribution of the school counselor to the educational team is not always clearly defined. Even though there is general agreement about the need for counselors, there is confusion about the duties of the counselors. The job description sets forth these duties. These duties do not include nor infer at any time that the counselor be charged with the administrative responsibility of computer or hand scheduling the students choices within the master program or be charged with any computer related activities. The counselor's activities do not include clerical duties involved with the keeping of the official permanent records of the students.

The following statements are strongly recommended by the National Association of School Counselors, as the primary objectives of a school counselor's job description:

1. The school counselor is a professional educator who is employed to provide educational, career, vocational, and personal guidance and counseling for all students, K-12.
2. The school counselor is a primary facilitator in providing the appropriate educational climate necessary for the students learning about themselves and others and for preparing them for their future.
3. The school counselor's purpose is to meet the needs of the individuals through planning, consulting, counseling and coordinating a school guidance and counseling program.
4. The school counselor is an integral part of the educational team of administrators, teachers, parents, students, and others who assist students to learn.
5. The school counselor, in implementing guidance and counseling services, coordinates these services with the regular instructional program, thus providing a unified educational program.

The school counselor should be educationally qualified for certification by the state department of education, the profession controlled licensure board and/or certification board.

JOB SUMMARY

Under the administrative direction of the school superintendent, director of guidance or principal, the counselor participates in planning and developing the educational, guidance and counseling program in relation to the needs of the students being served. Coordinates, supervises, and carries out functions which provide educational, career, vocational, and personal guidance and counseling services. Assists in developing and implementing in-service education programs for professionals and other personnel engaged in the school educational, guidance and counseling programs. Serves as consultant in the area of guidance and counseling to the school staff, parents, and personnel of cooperating agencies. Carries out related public relations activities.

WORK PERFORMED

- 1. Receives general instructions from the school superintendent, director of guidance and counseling or principal regarding over-all operations of counselor's functions pursuant to the job description as established by the state departments of education, negotiated contracts and the National Association of School Counselors.*
- 2. Assists in planning and developing the school's educational, guidance and counseling program in relation to the needs of the students being served.*
 - 2.1 Coordinates the accumulation and use of meaningful information about individual students and the student body.*
 - 2.2 Summarizes objective and subjective data for use in curriculum planning purposes.*
 - 2.3 Assist in identifying students with special abilities and needs.*
 - 2.4 Serves as a member of the educational team in developing and modifying the curriculum.*
 - 2.5 Participates in conducting local research relating to pupil needs and evaluating the educational and guidance and counseling program.*

3. *Provides a program of educational, career, and vocational services.*
 - 3.1 *Prepares, collects, and makes available to students and parents information concerning school offerings, opportunities for further education, careers, and career awareness, exploration, and training opportunities.*
 - 3.2 *Assists teachers in working with students in regard to program planning and course selection.*
 - 3.3 *Coordinates educational, career, and vocational placement services with others engaged in the total placement program.*
 - 3.3.1 *Plans with teachers and administrators for meeting instructional needs of students K-12 at all levels of achievement.*
 - 3.3.2 *Assists teachers in working with students in regard to program planning and course selection.*
 - 3.3.3 *Aids students in developing long-range educational plans and making appropriate choices of school courses.*
 - 3.3.4 *Assists students in making the transition successfully from one school level to another and from school to employment.*
4. *Provides personal and developmental counseling services through individual and group conferences.*
 - 4.1 *Helps students in understanding self in relation to the social and psychological world in which he/she lives and accepting one's self as he/she is.*
 - 4.2 *Aids students in understanding social and cultural groups and in developing behaviors that will enable him/her to function constructively in different situations and to gain personal satisfaction from his/her experiences.*
 - 4.3 *Helps students to become aware of his/her potential, interests and to develop these to the fullest.*
 - 4.4 *Helps student to develop personal decision-making competencies in resolving personal problems.*
 - 4.5 *Provides parents with information about their children with due regard to the child's desire for confidentiality.*

- 4.6 *Holds conferences to assist parents in understanding their children and in obtaining realistic perceptions of their children's potentials.*
- 4.7 *Provides parents with information about educational and occupational opportunities and requirements, counseling programs, and related guidance and counseling services available to them and their children.*
- 5. *Coordinates the use of services available beyond those counselors can provide.*
 - 5.1 *Informs students and parents of the availability of such services.*
 - 5.2 *Maintains liaison and cooperative working relationships with other pupil personnel specialists and with agencies in the community offering special services.*
 - 5.3 *Encourages the development and/or extension of community agencies for meeting special pupil needs that are not already adequately met.*
- 6. *Serves as consultant in the area of guidance and counseling to members of the school staff, parents, and personnel from cooperating agencies.*
 - 6.1 *Shares appropriate pupil data with due regard for the student's desire for confidentiality, interprets data, and provides information in regard to its limitations and proper use.*
 - 6.2 *Shares information regarding the growth and development of students.*
 - 6.3 *Consults with co-workers in identifying and working with students with special needs and problems.*
 - 6.4 *Aids teachers in securing materials and in developing procedures for a variety of group guidance experiences.*
 - 6.5 *Consults with personnel of other community agencies engaged in related programs.*
 - 6.6 *Participates in planning and implementing in-service education progress.*

7. *Participates in research programs related to students needs and in evaluating how well school guidance and counseling services are meeting the needs.*
 - 7.1 *Describes objectively the population of the school as a basis for future planning.*
 - 7.2 *Determines progress of student body through more reference and criterion reference tests and follow-up studies of grades made by students.*
 - 7.3 *Suggests areas of curriculum in need of study and possible revision.*
 - 7.4 *Appraises the characteristics of population being served by means of appropriate measurement programs and makes data available for use in educational, career, and vocational planning.*
 - 7.5 *Directs the compilation of data concerning student dropout rates and failures; seeks causes and makes recommendations for improvement.*
 - 7.6 *Makes studies annually of each grade level to determine the relationship between the students aptitudes and achievement and the selection of courses of study, and post-high school endeavors for evaluation purposes.*
 - 7.7 *Keeps informed concerning occupational trends in the community and nationally.*
 - 7.8 *Makes systematic judgments of the relative effectiveness with which goals of the guidance and counseling programs are attained in relation to specified standards.*
8. *Carries out a program of public relations.*
 - 8.1 *Participates in programs of various community groups.*
 - 8.2 *Furnishes information regarding the counseling and guidance program as needed.*
 - 8.3 *Encourages community participation and involvement in school programs.*

QUALIFICATIONS

The educational and experiential qualifications of the school counselor are in concurrence with and pursuant to the certification requirements established by the professionally controlled licensure board and/or the state Board of Education.

LAYOFFS!

IN TEACHING STAFFS.

NEA REPORT DESIGNED TO ASSIST
IN
DEVELOPING SPECIFIC PLANS
FOR
ASSOCIATIONS

REPRODUCED BY

National Association of School Counselors
1201 Sixteenth Street, N.W.
Washington, D. C. 20036



LAYOFFS IN TEACHING STAFFS

LAYOFFS: TYPES, CAUSES, EFFECTS

"Layoff," "reduction in force," and "mass contract nonrenewal" are terms used to describe a situation when at least one person, although usually more, is separated from employment as a result of economic or operational considerations. For purposes of discussion, the term "layoff" is used in this document.

The classic layoff is characterized by a decrease in the number of teachers throughout the entire system because of economic conditions. Another common but more specific type of layoff results from a school system decision to change or reduce the breadth of its curriculum, thereby decreasing the number of teachers in a particular subject area or areas (e.g., French, music, art, or instruction for emotionally disturbed children). While these two types of layoffs involve many of the same issues, the focus of this document is on the former since layoffs for this reason are of major concern to teachers at this time.

Although the teaching profession has not been confronted with the problem of declining employment since the depression-ridden 1930's, in recent years various factors have contributed to a substantial increase in displaced teachers.

First, the declining birth rate in this country has produced a steadily decreasing student enrollment. Public elementary-school enrollments have been decreasing over the past four years and high-school enrollments are expected to begin an era of decline in 1977. A significant enrollment drop often affects school budgets since in many states, school systems are entitled to state financial support on the basis of the number of enrolled students. Second, the cost of operations in most school systems has increased as a result of inflation but there have been no corresponding increases in revenues from local, state, or federal sources. Third, where local industries are adversely affected by the economic situation in the nation and are forced to reduce the number of their own employees or shut down operations completely, the revenue generated from local taxes is often reduced. Fourth, in many areas of the country the school systems are the only governmental entities that must rely on direct tax levies. Thus, a citizens' revolt against rising taxes in general can be directed only toward the schools by defeating propositions for increases in financial support of the school system. A less common cause of reductions in teaching positions has been the consolidation of school districts in an effort to avoid duplicate services or to effectuate desegregation plans.¹ Any one of these conditions, or others, may account for a particular layoff, and they may occur solely or in combination.

Regardless of the cause, any economic "crisis" in a school system is likely to raise the possibility of a layoff. One cannot predict with accuracy the long-term effects of such layoffs on the nation's educational system. However, several results can be assumed on the basis of an understanding of the immediate consequences.

A reduction of teaching staff without a corresponding decrease in student enrollment will assure an increase in the pupil-teacher ratio and class sizes. Even with a decrease in enrollment, a reduction in staff will almost surely require elimination or curtailment of special subject areas or extracurricular activities. With a smaller teaching staff and insufficient funds, a school district may retrain or hire lower paid paraprofessionals to assume functions previously performed by better trained and more experienced teachers. Finally, as one of the least obvious effects of a layoff, teaching effectiveness may be impaired. If a number of teachers are notified of nonrenewal in the spring, the morale of all the teachers in the system is likely to suffer. Even if the nonrenewed teachers are rehired in late summer or early fall, they re-enter the system without proper planning and with continuing uncertainty about their careers.

Each of these results may have detrimental effects upon the adequacy of the education provided to the students. And any significant number of citizens with a less than adequate education has serious ramifications for the social and economic conditions in the nation: higher unemployment rates, loss of tax revenues, and larger expenditures for welfare and crime.² At such point, the cycle repeats with less revenue available for education, fewer teaching positions, and a poorer quality of education.

Because of the ultimate consequences of fewer teachers in the nation's schools, a primary concern of all associations should be to avoid layoffs if at all possible. Furthermore, each teacher association should be able to render assistance to the individual teachers directly affected by a layoff. Since these objectives require preparation well in advance of any proposed layoff, each association should become familiar with the protection afforded by state and federal laws, policies of state and local boards of education, and the collective bargaining process. Part II of this memorandum discusses the types of protection that may exist by virtue of the federal Constitution: and statutory and case law. Parts III, IV, V and VI discuss the organizational methods of achieving maximum protection against layoffs. Part VII discusses the economic benefits available to teachers if layoffs do occur.

STATE STATUTES, FEDERAL CONSTITUTION, AND GOVERNMENTAL ACTIONS

At the outset it should be noted that no existing law, state or federal, contains adequate protection against the loss of teaching positions through layoffs. However, since these laws are "on the books" and since some statutory or

Prepared by the following units of the National Education Association: Communications, Government Relations, Negotiations, Office of the General Counsel, Research, and Teacher Rights.

constitutional provisions may be helpful in some instances, a logical point of departure is examination of these laws for the protections which are available.

SUBSTANTIVE PROVISIONS

With respect to layoffs, state tenure and fair dismissal laws fall into several broad categories.³ First, some statutes specifically permit as a reason for dismissal⁴ a decrease in enrollment or a justifiable decrease in the number of teaching positions, as well as other specific or general reasons;⁵ other statutes allow for the "suspension" of a teacher's contract because of a decrease in enrollment;⁶ and at least one law authorizes school boards to place teachers on leave of absence because of a decrease in enrollment, a reorganization of the schools, or financial conditions.⁷

A second type of statute is silent on dismissals for economic reasons, but expressly enumerates causes of misconduct such as incompetency, insubordination, and immoral conduct and contains the added phrase "and for other good and just causes" or the equivalent thereof.⁸ It might at first glance seem possible to argue that this type of statute, by its own terms, contemplates only dismissals for acts of misconduct by individual teachers and; in turn, the catch-all phrase "cause" refers exclusively to such acts. The result would be to impart to these laws the principle that teachers have an absolute statutory guarantee against loss of employment for reasons other than acts of individual misconduct.

Not surprisingly, however, this interpretation of these laws has been rejected by the courts which have considered this issue.⁹ They have concluded that the provision permitting dismissal for any good or just cause refers not only to the teacher's fitness or capacity to perform, but also to situations where bona fide economic considerations warrant a reduction in force among the teaching staff.

A subclass of this type of statute authorizes dismissal "for cause" or "for just cause" without specific enumeration of what acts are embraced by the term. On the basis of the rationale discussed above, these statutes are interpreted to include bona fide reductions in force in the definition of "cause."¹⁰

A third type of statute merely enumerates categories of misconduct as grounds for dismissal without specifically authorizing dismissal for economic reasons or for "good cause."¹¹ Under these statutes, it is unclear whether a school district would be permitted to dismiss a teacher for any reason other than those enumerated.

Where state law enumerates specific conditions under which a reduction in force is permissible, a school system must be able to demonstrate that the specific statutory conditions for dismissal are present. For example, if the state law permits reductions in force for a "substantial decrease in pupil enrollment," the school system cannot dismiss a teacher on the general ground that this will enhance efficiency or economy.¹²

Thus, the board may not be able to satisfy a requirement that the decrease in enrollment be substantial. For instance, in some cases the board may rely upon a past decrease in enrollment even though teachers were subsequently hired in the same field of certification as the teach-

er(s) the board proposes to dismiss. Arguably, the statutory condition is not satisfied in such a case.¹³

Where the economic need or other reason for the reduction in force is based upon fact, however, most laws—even those which specifically list the prerequisites to a layoff—will afford small comfort to any contemplated legal effort to block the layoff. It will be especially difficult to mount a successful challenge where the law contains language authorizing reductions in force in very broad terms, e.g., to effectuate economies or to improve efficient conduct and administration of the schools (Arizona), where there has been an elimination of the teacher's position (Connecticut), or where there is a reduction in the number of teachers required as a result of decreased enrollment or a decrease in education services (Delaware).

In addition to prescribing conditions under which a layoff may be made, the state law may contain provisions bearing upon the manner in which a reduction in force is to be accomplished, and in some cases it can be argued that a laid-off teacher was not selected in accordance with statutory criteria.

For example, a few tenure statutes provide that no tenured teachers qualified to fill an existing position shall be laid off unless and until all probationary and nontenured teachers have been laid off.¹⁴ Further, some tenure statutes expressly endorse the principle that seniority governs in determining which teachers should be laid off in a reduction in force. For example, the California statute provides that no tenured teacher may be discharged unless and until all nontenured and tenured teachers with less seniority have already been dismissed. (Compare the statutes in Hawaii, Kansas, Massachusetts, Minnesota, New Jersey, Ohio, Rhode Island, Texas and Pennsylvania.)

However, in most states there is no specific statutory provision governing the order of layoff among tenured teachers, among nontenured teachers or between tenured and nontenured teachers. In these circumstances the courts are divided as to whether the relative seniority of each teacher governs. In one case, the court held that a tenured teacher was improperly dismissed because the notice did not inform her that librarians junior to her in seniority were being retained.¹⁵ In another case, however, the court suggested that under the New Jersey statute the school board has wide discretion in determining which of two tenured teachers to retain.¹⁶

Furthermore, even under those state statutes which mandate the observance of seniority rights in effecting a layoff, little, if any, recognition is accorded to the possible distinctions between measuring seniority by the number of years of service within the entire school system and judging seniority on the basis of years of service within the particular school or department (e.g., French, music, art) in which the reduction is to be accomplished.

In short, tenure laws do not comprehensively or adequately address the issue of the order in which a layoff shall occur.

In addition to examining the applicable tenure law, it is important to identify and examine any rules, regulations, or policies of the state board of education or the local board of education which may bear on the question of the propriety of the layoff. For example, in a case in New Jersey the

court held that the termination of the employment of tenured teachers was in violation of the college's policies.¹⁷ The policies required an "extraordinary, bona fide" financial exigency prior to a layoff of tenured teachers and the court found that in light of the college's ownership of a golf course valued between one and four million dollars that standard was not met.

Finally, a layoff may be a cloak or a pretext for a discharge actually based on other reasons. In such a case, the Constitution of the United States, as well as the state laws and local policies, may afford some substantive protection.¹⁸ Where the layoff is motivated by constitutionally impermissible reasons, such as race, protected free speech, or protected association activities, the Constitution renders the board's action invalid. Moreover, where it rests upon a reason which has no basis in fact, it may run afoul of the "substantive due process" that is guaranteed to teachers (at least tenured teachers) by the Fourteenth Amendment. It will be the exceptional case, however, in which a teacher will be able to establish that the board acted for constitutionally impermissible reasons, or so arbitrarily as to contravene the Fourteenth Amendment.

PROCEDURAL PROVISIONS

Some tenure statutes providing for notice and hearing in cases of discharge have been interpreted as contemplating procedural protection in cases involving dismissal for economic reasons.¹⁹ However, other statutes have been given the interpretation that procedural due process requirements apply only to teachers discharged or demoted because of alleged acts of personal misconduct but not to general reductions in force resulting from economy measures invoked by school authorities.²⁰ On this question, the language and structure of the particular state statute involved are likely to be determinative. Here again, it is important to check the rules, regulations, and policies of the state and local boards of education. These may confer additional procedural protection not in the statute.

In addition to the procedural requirements contained in tenure laws and policies of state and local boards of education, some courts have held that the due process clause of the Fourteenth Amendment mandates certain procedural protection for tenured teachers whom a school board proposes to lay off.²¹

The courts are divided on the question of whether teachers with a protected interest are entitled to a "full hearing" (e.g., right to counsel, right to cross-examine witnesses, right to receive transcript). Nor is the law settled on the question of what issues the teacher may contest. One court has held that a tenured teacher was constitutionally entitled to an administrative hearing on the question of whether his employing institution properly implemented the criteria it had promulgated governing the order of layoff.²² Another court has held that the Fourteenth Amendment entitled a tenured teacher to the opportunity to show that the reasons for laying him off were constitutionally impermissible or that the ultimate decision to designate him for layoff was arbitrary and unreasonable.²³

As the foregoing discussion indicates, tenure statutes do not adequately protect teachers facing layoffs. Many statutes provide only broadly worded guidance as to when such layoffs are justified. Many contain no provision for a hearing. Many are silent or vague as to the order of layoff. These defects generally are not cured by the federal or state constitutions or by state or local board policies. The inadequate protection which existing statutes and policies afford teachers in connection with layoffs makes the matter one of high priority in the collective bargaining process.

THE COLLECTIVE BARGAINING PROCESS

Negotiations regarding employment protection should not be deferred until layoffs are imminent. On the contrary, the most opportune time to develop appropriate procedures is while the threat of layoff is still only potential so that the various alternatives can be assessed in a more objective context.

Layoffs allegedly for economic reasons pose the following types of issues:

- What will be the permissible bases for such layoffs?
- By what process will the asserted bases be subjected to scrutiny by the association?
- What procedures will be followed in implementing the layoffs?
- By what criteria will the question of "who goes first" be resolved? If "seniority" is to be relevant, how is it to be computed? How can affirmative action plans be reconciled with seniority in the layoff process?
- What will be the status of teachers who are laid off?
- What rights of recall will teachers have?

This document contains a number of suggestions regarding the issues above and the language that might be used to deal with them in collective bargaining agreements. Each suggested provision should, however, be considered in relation to local conditions and should be adapted to meet special circumstances. Leaders responsible for the negotiation of a contract should (a) be aware of the nature and scope of the various problems regarding layoffs, (b) recognize any alternate methods to deal with these problems, (c) reach decisions with respect to the strategy to be employed, (d) carefully draft bargaining demands to reflect specific objectives, and (e) pursue those demands in collective bargaining until satisfactory contractual provisions are obtained.

At the outset it should be noted that the relationship between a state tenure law and the provisions of a collective bargaining agreement is often complex. Generally, a provision which does not conflict with the tenure law, but rather supplements the rights afforded tenure teachers by statute and perhaps creates certain rights for nontenured teachers, is likely to withstand judicial attack.²⁴ It would be wise to review any applicable state laws before provisions on layoffs are proposed.

Listed below are six sections which comprise an article on reduction in force. Following each section, or cluster of sections, is a discussion of the issues presented and, in some instances, alternative approaches to those issues.

Section A

A teacher may be laid off only when his or her position is eliminated as a result of a substantial reduction in the funds available to the board, provided that such reduction cannot be avoided by the exercise of the board's taxing or other fiscal powers, or offset by reduction in expenses other than personnel.

This section states the permissible grounds for a layoff. Ideally, of course, an association should seek a contract which prevents layoffs altogether. However, if that position is hopelessly remote from the realities of the situation, an association should insist on contract language which would strictly limit the power of the administration to reduce its teaching staff to certain carefully designated circumstances. A compelling rationale for a reduction in force will occur in those situations where the school system is unable, in any manner, to meet the salary costs of the present teaching staff, and this section limits any layoffs to such a situation.

There are, of course, other circumstances which a school administration will seek to include as permissible grounds of layoffs, e.g., reductions in enrollment, increases in operating cost, elimination of certain programs, and consolidation of school districts. If any of these conditions are to be included in a collective bargaining contract, the association must be sure that the language reflecting those concepts limits the discretionary power of the school administration and permits careful scrutinization of the asserted reasons. Any of the following clauses would meet this criterion if an association agrees, for whatever reason, to expand the permissible grounds for layoffs.

Teachers may be laid off only when their positions are eliminated as a result of:

1. A substantial increase in the operating costs of the board, provided that such increase cannot be offset by the exercise of the board's taxing or other fiscal powers or offset by reductions in expenses other than personnel.
2. A substantial reduction in pupil enrollment.
3. The discontinuance of a particular type of teaching service, provided that such discontinuance is not for arbitrary or discriminatory reasons.
4. A bona fide consolidation of the school district with one or more other school districts.

Section B

1. If the board is contemplating the layoff of any teachers, it will so notify the association at least sixty days before the proposed effective date of the layoff. If the layoff is to become effective as of the first day of the following school year, the board will notify the association by February 1. Such notice will be in writing and will include the specific positions to be affected, the proposed time schedule, and the reasons for the proposed action. The board will, if requested to do so, enter into negotiations with the association regarding the need for, alterna-

tives to, manner of implementation and impact of, and other aspects of the contemplated layoffs, and will prior to such negotiations, make available to the association, at board expense, all relevant data. Any teacher who is to be laid off will be so notified in writing thirty days after notification to the association. Such notice will include the proposed time schedule and the reasons for the proposed action.

2. If the association and the board are unable to agree regarding the need for, alternatives to, manner of implementation and impact of, or any other aspect of the contemplated layoffs, such disputes may be submitted directly to binding arbitration in accordance with Article ____ of this Agreement. If submitted to arbitration, the board shall take no further action to implement the layoff action until an award is rendered.

Section B sets forth the mechanical but fundamental aspects of the layoff procedure. Although these provisions may seem relatively unimportant at the time of negotiations, they are crucial if a layoff should occur. Basically, this section establishes a system for advance notification to the association, a statement of specified reasons for the proposed layoff, accessibility of relevant information, and an opportunity for the association to negotiate with the board regarding the layoff. If negotiations do not resolve all issues, the association is empowered to submit the dispute to an arbitrator without proceeding through the initial steps of the grievance procedure.

Section C

1. If a position is to be eliminated, the board shall give notification of layoff to the least senior teacher in that position.
2. A teacher who is notified of layoff will have the right to displace any less senior teacher whose work he or she is certificated to perform. Written notice of intent to exercise this right must be given to the superintendent, with a copy to the association within three days after a teacher is notified of layoff. Within three days after the teacher gives such notification, the superintendent will notify the less senior teacher that he or she is to be displaced.
3. A teacher who displaces another teacher will be placed on the proper step of the salary schedule for the new position according to his or her experience and education, and will retain all accrued benefits.
4. A teacher who is to be displaced pursuant to this Section will have the same displacement rights vis-a-vis less senior teachers as a teacher who is to be laid off pursuant to Subsection 2 above.
5. A teacher who is notified of layoff and who is not able to displace a less senior teacher will be reimbursed by the board for any reasonable expense including, but not limited to mileage, lodging and food expenses, printing and mailing, incurred in connection with his or her search for other employment for a period of six months or until notified of recall, whichever is sooner. A teacher who is notified of layoff shall be entitled to use any available personal leave to seek other employment.

Section C contemplates an initial notice of layoff to the least senior teachers whose positions have been eliminated regardless of the teachers' relative seniority in the system. For example, if economic factors required the elimination of twenty positions in the system, the teachers in

those positions would be notified of layoff. Since those teachers would not necessarily be the least senior in the system, they would be able to displace a less senior teacher whose work they would be certificated to perform. (Note the distinction between "certificated to perform" and "qualified to perform." The former is objective and easily identifiable; the latter is subjective and would give the school administration discretion in determining which teachers could displace or be displaced.) It must be recognized that this approach could result in certain inequities. For example, if the French department is eliminated and a French teacher with fifteen years of experience is not able to teach any other area, this system would not provide any opportunity for his or her continuing employment. In such a case the French teacher would be unemployed, but, it is hoped, eligible for retraining discussed in Section E, below.

There are, of course, other available options. For instance, if the board intends to eliminate twenty positions, the contract could specify that only the twenty least senior teachers be given notices of layoff. The problem with this approach, of course, is that the twenty least senior teachers may be in positions that the board does not intend to, or cannot, eliminate. To fill the vacancies created by their layoff, the system might require substantial transfers and reassignments with the attendant inconvenience to those teachers who would be required to change schools or subject areas.²⁵

Section C also contains a provision which would permit reimbursement for expenses related to the search for a new job. Since this provision would apply to any teacher who had been notified of layoff, even though later recalled, it would encourage the board to refrain from issuing mass notices of layoff to all, or most, of the teachers and then "recalling" the individuals it would wish to retain. Rather, the board would be encouraged to limit the initial notices of layoff to the positions which would actually be eliminated from the system. Although some might argue that this expenditure of funds by the board should not be made during a financial "crunch," it should be stressed that the total cost for these expenses would probably be only a small percentage of the budget and, further, that these costs are more easily borne by the school district than by the teachers who are about to lose employment.

Furthermore, this provision should be able to withstand any legal argument that it is a "gift of public funds" to reimburse expenses incurred in a search for a new job. If the board agrees to this provision in a collective bargaining contract, it becomes a legal obligation for the board to pay it, and payment of a legal obligation cannot be considered a "gift."²⁶

Section D

1. For purposes of this Article, seniority will be computed from a teacher's most recent date of hire in the bargaining unit, and will begin to accrue as of the first day of actual service in the bargaining unit. Seniority will continue to accrue during all paid leaves of absence, and for a period of two years from the effective date of the layoff. Seniority will not be broken by unpaid leaves of absence or employment by the board in a position outside the bargaining unit, but such time will not be

counted in computing seniority. When seniority is equal between or among teachers ranking of those teachers shall be terminated by the drawing of lots.

2. For purposes of this Article, the president of the association will be deemed to have greater seniority than any other member of the bargaining unit, and the vice-president will be deemed to have seniority second only to that of the president.
3. On or about September 30 of each school year, the superintendent will provide the association with a list showing the seniority of each teacher employed by the board, their areas of certification and courses taught and will, thereafter, promptly notify the association of any changes in said list. The superintendent will at all times have posted in his office a current list which will be available for inspection during regular working hours by any teacher and/or the association.

Regardless of the approach the association takes to determine who goes first in a layoff, there remain several issues regarding the manner of computing seniority for individual teachers, and Section D of the illustrative article has taken certain positions regarding such issues. Each association should consider the following issues:

1. What considerations should govern the order of layoff if two or more teachers have identical seniority? Should it be resolved arbitrarily (as in the Article) or in some other manner?
2. Should teachers be "credited" for seniority purposes with time spent on sabbatical leaves, maternity leaves, extended sick leaves, military leaves, or any other types of leaves of absences?
3. Should officers of the local association be exempted from the normal seniority rules and accorded a special status whereby they are treated for layoff purposes as if they were the most senior employees in the entire school system? If this practice of bestowing "super-seniority" is adopted by a local association, which specific officers warrant this special treatment?
4. Should teachers with prior experience in other school systems be credited with all or any such service upon being hired into the school system?
5. If the agreement places a limit on credit for prior experience, should it nonetheless give the total actual credit to former teachers in the system who resigned and were rehired?²⁷

Whatever system is utilized, it must contain specified standards with the least possible room for discretion or confusion.

One common thread is present with respect to all of the questions raised above. In making decisions, the association will have to exercise its discretion in balancing competing interests of different individuals and groups, for if one employee's seniority status advances, some other employee's status is lowered to the same degree. Where the association is designated as the exclusive representative of all bargaining unit personnel, it may be charged with the "duty of fair representation." In complying with this duty, judgments regarding seniority must still be made by the association, but such judgments would have to be free from arbitrariness or motivation based upon hostility or a desire to discriminate against an individual teacher or class of teachers.²⁸

Finally, there are other bases available for determining "who goes first" which are not based on seniority at all or are only partially based on that concept. Those bases which are related to *objective* standards could be appropriate alternatives. For example, the order of layoff might rest on a formula which gives weight to the teacher's academic achievement (e.g., B.A., M.A.) as well as years of service.²⁹ However, bases which are purely subjective are not considered acceptable means of determining the order of a layoff. For instance, some school administrations may seek to use prior performance ratings as determinative in order to eliminate the "less desirable" teachers when the size of the teaching staff is reduced. If the association agrees to this procedure, it will give credence and significance to the subjective evaluations (and biases) of principals and administrators and involve itself in the sticky business of comparing the abilities of the individuals it represents.

Section E

1. If there is a vacancy in a negotiating unit position, laid-off teachers who are certificated to perform the work in question will be recalled in order of seniority.
2. If a laid-off teacher has displaced another teacher or has been recalled to a position other than that held immediately prior to layoff, the teacher will remain eligible for recall in accordance with the provisions of Subsection 1 above.
3. Notice of recall will be given by telegram or registered mail to the last address given to the board by a teacher. A copy of the notice of recall will be given to the association. If a teacher fails to respond within ten days after receipt of the above notice of recall, the teacher will be deemed to have refused the position offered.
4. A teacher who is laid off will remain on the recall list for three years after the effective date of layoff unless the teacher:
 - a. Waives recall rights in writing;
 - b. Resigns;
 - c. Fails to accept recall to the position held immediately prior to layoff or to a substantially equivalent position;
 - d. Fails to report to work in a position that he or she has accepted unless such employee is sick or injured. If a teacher has secured temporary employment elsewhere, he or she will be allowed a reasonable amount of additional time before being required to report for work.

Section F

1. While on layoff, a teacher will have the option to remain an active participant in the state teacher retirement system and/or other fringe benefit programs by contributing thereto the amount he or she would have been required to contribute if actively employed, and the board will contribute the amount that it would have been required to contribute if the teacher were actively employed.
2. While on layoff, a teacher will be eligible for reimbursement of tuition costs for classes taken in order to obtain certification in additional areas. If a teacher has received tuition reimbursement and refuses to accept recall to the position held immediately prior to layoff or to a substantially equivalent position, that teacher shall be liable to the board for the total amount of tuition reimbursement paid to him or her.

3. All positions of substitute teacher shall be offered to teachers on recall, in rotating alphabetical order, before any other person is offered such a position.
4. All benefits to which a teacher was entitled at the time of his layoff, including unused accumulated sick leave and credits toward sabbatical eligibility, will be restored to the teacher upon his or her return to active employment and the teacher will be placed on the proper step of the salary schedule for the teacher's current position according to the teacher's experience and education. A teacher will receive increment credit for time spent on layoff.

Section G

1. Notwithstanding any other provision in this Agreement, no vacancy in a bargaining unit position will be filled by the board, and no work previously performed by teachers in the bargaining unit shall be performed by any other person, until the procedures set forth in this Article have been complied with.

[Affirmative Retention]

Any inconsistent provision of this Agreement notwithstanding, the commitment of the Board and the Association to affirmative action will be maintained in a layoff through affirmative retention as follows:

1. If (a) minority individuals as a group (Black, Mexican-American and other Spanish-speaking groups, Asian-American, American Indian) or (b) women are underrepresented at any professional level [i.e., classroom teacher, counselor, department chairman, assistant principal, principal], the percentage of employees of that group at any such level shall be, as nearly as possible, no less after any layoff than it was prior to the layoff.
2. The percentage of minority individuals or women employed at any professional level at which they are not underrepresented prior to a layoff shall not decrease as a result of that layoff to a level indicating underrepresentation.
3. Underrepresentation shall be defined as the employment of members of either group at a particular professional level in the district in a percentage which is lower than their respective representation in the class of all individuals holding valid state certificates for the level in question, as indicated by statistics available from the State Department of Education.

The provisions of Sections E and F demonstrate the types of issues which must be considered in the post-layoff relationship of teachers both while they are awaiting recall and when they are again in active employment. It should be stressed that a layoff does not customarily contemplate permanent termination when initially implemented. Teachers, like any employees affected by a decrease in an employer's operation, should be considered as being on layoff awaiting recall, and not as though the employment relationship has been terminated. The contract should contain clear and explicit language to that effect. Although the Article here suggests possible means of dealing with the issues related to layoff, each association should consider possible variations in the provisions.

Furthermore, an association, in conjunction with neighboring associations, may wish to consider proposing a reciprocal inter-system rehiring provision. A teacher laid off in

one system would have recall rights in any other system which had included in its collective bargaining agreement a provision for such recall rights. Each system's own employees would be given recall rights first, with teachers laid off in other districts to follow. Only after all of these teachers had been offered employment would any outside applicants be accepted.

To implement this concept, an association must consult neighboring associations to develop contractual language. Each association should propose identical contract provisions and coordinate efforts to obtain agreements from their respective school systems. The proposals could reflect many of the same provisions in Sections E and F, but changes would have to be made in the definition of "teacher" for purposes of those sections and in the order of recall so that the system's teachers would have preferential recall rights.

[Recall]

Individuals who are laid off shall be offered recall in order of seniority to vacant positions which they are certified to fill, except where otherwise necessary to assure that the percentage of minority individuals or women employed at any level at which they, as a group, are underrepresented shall, as nearly as possible, not decrease as a result of any recall. Where it is necessary to recall members of either group to maintain this percentage, appropriately certified individuals shall be offered recall in order of seniority within their respective group.

As a final caveat, the total contract must be examined from the perspective of its effect on layoffs. The contract must be viewed for technical consistency, e.g., how do articles on transfers, vacancies, and promotions dovetail with the article on layoffs? Further, it must be viewed for any substantive protections which could be offered to teachers affected by layoffs. For example, should the article covering sabbaticals and leaves of absence reflect preferential treatment for teachers who are to be laid off? Is accrued sick leave to be converted into cash as a type of "severance pay" for laid off teachers? These types of questions must be considered during the development of proposals and the negotiation of the contract.

CHALLENGING THE NEED FOR LAYOFFS

We have demonstrated above that a collective bargaining contract is better able to provide teachers with protection against layoffs than is a state tenure law or the federal Constitution. Furthermore, the enforcement of a layoff provision through the arbitration of a collective bargaining contract provides, in general, a better procedure for teachers through their associations to challenge the implementation of a layoff than does a court action to enforce the state tenure law or redress the deprivation. First, the resolution of a dispute in an arbitration is more expedient and far less costly than is litigation to enforce the contract or statute. Second, because an arbitration proceeding has greater immediacy, the procedure gives the association greater visibility and enhances its prestige with those teachers it represents or seeks to represent.

However, regardless of the source of protection or the type of enforcement procedure—arbitration, litigation, administrative hearings, or a combination—the association must be prepared to show that the proposed layoff would contravene the substantive standards set forth in the collective bargaining agreement, the governing statute or policy, or federal constitutional provisions. For instance, if a state statute establishes "good or just cause" as a basis for dismissal, it should be urged that the financial situation in the district does not meet that standard. It might be argued that the budgetary analysis upon which the administration relies in asserting the need for a layoff is incomplete or inaccurate, e.g., it does not take into consideration federal or state funds or the anticipated attrition rate. The necessity for the layoff might also be challenged by showing, where applicable, that new or otherwise vacant positions are being filled or are available contemporaneously with the layoffs.

At the same time, it might be urged that the system has available alternative measures which negate any need to dismiss teachers. Such alternatives might include a reduction in expenditures for such items as administration, operations, and maintenance or, if permitted by law, an increase in revenue through taxation or an application to the state and federal governments for financial assistance. It can also be contended that the layoffs would have an adverse effect on standards for educational programs, and/or that the proposed reduction in the number of staff would jeopardize compliance with state regulations (e.g., class size limitations).

Finally, if the collective bargaining agreement or state law or policy sets forth the manner for determining which individuals are to be laid off, the association can challenge any violation or inconsistent application of that provision.

If any advantage is to be gained in any forum, an association must be able to present an accurate and complete analysis of the sources of revenue and allocation of funds in the school system's budget.

First, of course, the association should be informed about the budget structure, physical location of budget, and financial data and budget planning processes of the system. It is important to know exactly which personnel positions are included in the instructional budget. If the expenditures for administration or other activities not directly related to instructional services are placed in the instructional budget, a higher than true cost for instruction will be reflected. Thus, if the school system is proposing an across-the-board reduction in each budget category, revision would be required to reflect the true percentage of the reduction to the instruction budget. The association must be familiar with local, state, and federal sources of funding for the district, including miscellaneous items such as revenue on property rental and interest on investments.

In some states the funding from the state is determined on a per-teacher or per-class unit (teacher and specific number of pupils instead of a per-pupil basis. If this is the case, the elimination of teaching positions without a definite reduction in the number of pupils may decrease the amount of funds available to the district from the state, except where the school district has been employing a larger number of teachers than it has been allocated state funds to

support. Compliance with the required minimum pupil-teacher ratios should be monitored.

Many school districts maintain a contingency or reserve fund somewhere within the budget, although it may not be identified as such. It may exist as a line item of the budget which is perennially underspent. An examination of the past three or four years of the budgeted funds compared with the funds actually spent during those years may indicate the existence of such a reserve fund, and its underutilization.

Some school districts may transfer funds from the current expenditure budget to the capital outlay budget to guarantee interest for proposed school bonds. If such transfers have been made, and are not legally required to remain in the capital outlay budget, the association should insist that these be returned to the instructional budget.

The following checklist, which was prepared by the Washington Education Association, may be helpful as a guide to obtain accurate information on a school system budget.

1. Budgeted revenue by budget category for current, two previous, and ensuing years.
2. Budget disbursements by budget category for the current year and two previous years.
3. Estimated and actual enrollments for the current, two previous, and ensuing years.
4. Delinquent taxes and delinquent tax collections for the current year and two previous years.
5. Property tax estimates for the current, two previous, and ensuing years.
6. Property tax collections for the current year and two previous years.
7. Additional income from state, federal, or other agencies, accrued to the district and/or distributed to the county treasurer for credit to the district's current or future accounts, for the current year and two previous years.
8. Anticipated cash reserves, balances, etc., for the current year and two previous years.
9. All funds invested in:
 - a. Savings or time accounts in banks, trust companies, mutual savings banks, savings and loan associations;
 - b. Obligations, securities, certificates, notes, bonds or short-term securities or obligations of the United States;
 - c. Any other institution or agency selected by the board or county treasurer.
10. The amount of interest from the funds in (9) above which can be expended for instructional supplies or equipment.

Irrespective of the success of the arguments, the process of challenging a layoff itself will have positive effects. An arbitration or court action may assist in generating community pressure to avoid the layoff, both by dramatizing the issue and by buying time. In any event, the school

authorities may feel constrained to at least mitigate the effects of the layoff by reconsidering its scope or by implementing additional recall rights. In addition, a challenge may help in influencing school authorities to be more cautious in making future decisions to reduce the teaching force and in the manner in which those decisions are implemented. Finally, the teachers involved will see "first hand" that the association is providing representation at the precise moment when they are in most dire need of assistance.

ALTERNATIVES TO LAYOFFS

The preceding part has indicated ways in which an association can challenge a school system's claim that economic considerations require a reduction in staff. It must be assumed, however, that some systems will be confronted with such a real financial crisis that no budget and revenue analysis will alter the fact that the expenditures for instructional personnel must be reduced. The question, then, is whether such a reduction can or should be accomplished in any way other than the elimination of teaching positions and the termination of individuals' employment.

In many of the industries and services which have suffered in the recession, an effort has been made to spread the impact of hard times among all employees as an alternative to the layoff. Unions and employers have agreed, for example, to such measures as work sharing, shorter work weeks, and pay cuts.³⁰ At first glance, these alternatives may appeal to an association as a means of alleviating the problems caused by reduced funds. However, there is a very real question as to whether the implementation of the various alternatives can work in an educational setting. For example, rotating the work of workers on an assembly line is a far easier task than would be rotating the work of classroom teachers.

Furthermore, any association which agrees to consider such alternatives must at once begin to weigh the interests of the minority of teachers who may lose their jobs through layoffs and the interests of the majority of teachers. Not only would most teachers lose salary increases, or even suffer salary reductions, as a result of some alternative to a layoff, but the salary schedule in the school system could remain depressed for several years afterward. On balance, most leaders conclude that it is inappropriate to force all teachers to suffer in order to avoid the suffering of a few. Thus, the primary focus of an association should be to take whatever action may be necessary to protect all the jobs but to continue to protect the interest of the teachers who are not directly threatened by a layoff.

There is, however, one alternative to layoffs which would not require an association to abandon its responsibility for the protection of all teachers. To create greater attrition, thereby eliminating the need for a layoff, one option appears to be to encourage senior teachers to take early retirement. Of course, this alternative is feasible only to the extent that early retirement would not work adverse economic consequences upon the senior teachers and, further, would comport with their personal desires.

Most state retirement systems will require substantive improvements so that senior teachers can be encouraged to retire on desirable terms. Such improvements are, of course, cost items to the state. It is vital, therefore, that prompt steps be taken to engraft appropriate legislative amendments onto the retirement systems. Unless this occurs, associations may be placed in the incongruous position of seeking more liberal and costly legislative reforms at the same time that a generally declining budget for education necessitates a layoff among teaching staffs. Likewise, until more liberal retirement provisions are obtained, there will not be any incentive for early retirement and, thus, the desired "hedge" against a layoff will not have been realized.

COMMUNICATIONS CAMPAIGN TECHNIQUES FOR COMBATTING A LAYOFF

When local leaders become aware that a layoff might occur, the opportunity for a general communications campaign presents itself. At best, the campaign can result in achievement of the association's goals; at worst, gains will be realized in public awareness and understanding of the problems facing teachers and education.

The following suggestions are intended to help local communications coordinators put together and execute a successful campaign.

The Campaign: Goals, Strategies, and Tactics

As association communications campaign is a series of actions and communications designed to create an atmosphere in which the association can achieve its objectives. In creating a campaign against threatened layoffs, the planners, must identify and agree upon specific goals, strategies, and tactics.

Goals. What the association wants to achieve (e.g., no layoffs, minimal layoffs, contract provisions reducing class size, etc.).

Strategies. General plans to achieve goals (marshaling and directing intense teacher pressures on the school board, increasing public understanding and awareness and creating public pressures on board members, mobilizing specific community power actors to pressure board members, etc.).

Tactics. The specific actions taken to advance strategies to achieve goals. These depend on the analysis of the specifics of the situation. A few examples are:

1. All-teacher surveys on teaching needs
2. Canvass of community by teachers
3. Public information booths
4. Radio, television, newspaper advertisements
5. Coordinated visits to community leaders
6. Addresses to community service groups or other organizations
7. Specialized ads in specialized publications (trade, business, etc.)
8. Mass attendance at school board meetings

9. News conferences, news releases

10. Joint parent-teacher studies, actions.

Analysis. A basic ingredient in any campaign is thorough analysis in the planning stage. This involves a complete listing and understanding of all the basic factors affecting the problem. The following questions may provide a partial guide to assist in this process:

1. What are the facts of the current situation?
2. How much does the community know, and how did it receive its information?
3. What is the community reaction?
4. What is the actual fiscal condition of the district?
5. What is the community economic situation like, and how does it affect teachers and the association?
6. Are there any existing funds or alternate sources of revenue now or pending?
7. Are there any trends, such as real estate value, going up despite the economy?
8. What are the attitudes of the students, teachers, parents, general community, board members, administrators, politicians, and civic leaders toward the proposed layoffs?
9. What is the general public attitude toward local teachers and the association?
10. Have any events in the community prejudiced citizens favorably or unfavorably toward teachers, the association, or the school board? Can these attitudes help shape the communications campaign?
11. What is the general political climate? Have board members achieved comfortable election margins? Are they likely to face strong challenges? Has the association proved itself politically influential?

Analysis must include a thorough evaluation of the association's ability to affect specific target audiences, to achieve goals. Target audiences will, of course, vary in each community, but it is reasonable to suggest that primary targets should be the strongest power actors that can influence the outcome of the proposed layoffs. This group might include community political figures, parent groups, specific special interest groups, etc.

In actually planning the campaign, it is best to seek realistic and practical ways to accomplish goals. Therefore, since it will usually prove unrealistic to attempt to influence all powerful groups and individuals in any given community, targeting is recommended.

Planning the Campaign

The association case, and supporting factual evidence, must be as nearly complete as possible. It may not be necessary or desirable to use all the material accumulated, but changing events may call for additional resources.

Understanding the Board's Strategies and Tactics

The board will argue "financial need." It will probably stress a possible tax increase, a record of reduced class size and improved educational benefits, rising costs, declining enrollment, and the impossibility of acquiring new funds. The board may cite a lack of proven correlation between expenditure and achievement and, possibly, launch an attack against a supposed educational "ivory tower," claiming that the association is merely trying to maintain teaching jobs and to feather the education nest.

Many of these claims will have an emotional appeal to the community member who is not familiar with the facts about educational need and accomplishment. Remember that education is about the only area of government in which the citizen can directly vote "no" on funding. Today's taxation laws make schools and children the only easily accessible target for a taxpayers' revolt.

The Association Case

The association's advantages in the situation include:

1. Knowledge of all aspects of the financial situation. An essential ingredient in education is the teacher-pupil interaction. Once this fact is clearly presented, all financial outlays in other areas will appear secondary to those involved in pupil-teacher interaction. Often, even while a teacher layoff is being recommended, the superintendent and other administrators may be accepting salary increases and planning for additional administrative positions. Facts of this kind can be devastating to the board's "poverty" case when effectively presented by the association.
2. Every association member is a potential public relations representative. Teacher concern for student well-being finds a natural parallel in parent concerns. Used skillfully, this natural public relations force can be decisive, and the school board has no parallel strength.
3. The association can and should attempt to take the matter to the public before the school board does. Quite often the board will elect to muffle the issue until after the budget is adopted, leaving the taxpayers little or no recourse to reverse the damages. The association should be aware of this ploy and be prepared to combat it by making sure the community knows what its representatives are planning.

The Actual Campaign

Once the association has analyzed the situation and planned a campaign, the following may prove useful:

1. Concentrate first on organizing association members to work in the campaign. Members should un-

derstand the problem that has arisen and should be in general agreement with proposed solutions. Factual evidence should be given to counteract board propaganda, especially the "no money" plea.

2. Members constitute the campaign workers and should assume major roles. There are many things that require helpers: attending board meetings, serving as speakers for community groups, organizing and attending community coffee klatches, writing letters to the local newspapers, canvassing the community for support. Make sure that the association membership is kept fully aware of all significant developments as the campaign progresses.
3. Direct-contact portions of the campaign may include:
 - a. Mass attendance at school board meetings
 - b. An association spokesperson speaking at each board meeting
 - c. The media being fully alerted and briefed on the association position
 - d. Teachers going door-to-door (in pairs) to distribute leaflets about the problem and to discuss the matter with residents
 - e. Public information booths established in shopping centers or other community gathering places
 - f. Coffee klatches, gatherings of five to ten community members meeting informally with several teachers to discuss the problem
 - g. Participants in the association's speakers' bureau prepared and scheduled to address community forums.
4. Concurrent with other activities, the association should begin to contact and persuade the community power actors. The first step is, of course, to identify community people who are generally respected and listened to. Once this has been accomplished, association leaders should make the contacts and schedule meetings.
5. Other ways of reaching the public include flyers, handbills, petitions, letters, door-hangers, telephone canvassing, community newsletter, brochures, advertisements in newspapers, appearances on talk shows, etc.

Content of the Message

Remember that the association goal is not merely to arouse public sympathy. Public support and action is wanted, and this cannot be achieved by simply informing the community that "teachers might be fired." Instead, the association must reach one step further and ask the community members to *do something*: call school-board members, sign petitions, attend meetings, send telegrams, visit district administrators, attend rallies—whatever the planned campaign activities indicate will be most effective.

Avoid the use of self-serving quasi-honest slogans such as "teachers have to eat, too." Altruism on the part of the public is hard commodity to achieve in thriving economic times, and it is all but unreasonable to expect today. Naturally the association should be honest about the relatively self-serving aspects of efforts to retain teachers jobs, but it need not be done in a flagrant or harsh fashion.

Factual statements can be strong and effective. For example, "The trouble with a cheap education is that we never stop paying for it." Or, "Let's not destroy the reason schools exist."

Photographs of actual conditions in community schools can sometimes starkly reveal the reasons not to discharge teachers. Pictures of gigantic study halls, overcrowded classes, students sharing texts, etc. can do as much and more to convince the community of the reality of the association's arguments.

Financial realities are important to citizens, and therefore the association will need to prove that maintaining present standards of education will not bankrupt the schools nor result in massive tax increases. At times, communities seem to forget what their school tax dollars buy, and it may be effective for the association to drive home the point that the money is spent to educate children, not just for salaries and textbooks and pencils.

Find the padding in the budget and expose it. Then use the results of the association examination to support your case. A good example of this occurred recently in Pinellas County, Florida. The association there surveyed all teachers and asked them to identify ways in which the district was either wasting money or failing to conserve money. The survey resulted in massive publicity success for the association when it demonstrated how the district could save millions of dollars. The result was the school board's abandonment of a proposed plan to lay off all first- and second-year teachers.

BENEFITS FOR UNEMPLOYED TEACHERS

If all possible precaution and diligence have failed to prevent the implementation of a layoff, an association should be prepared to supply information and render assistance to those individuals whose employment has been terminated. The major federal programs which might offer relief to an unemployed teacher are discussed below. Additionally, each association should be familiar with any state or local program, public or private, which offers assistance to the unemployed.

Emergency Jobs and Unemployment Compensation

The Emergency Jobs and Unemployment Assistance Act of 1974, Pub. L. No. 93-567, provides assistance in the form of jobs and cash benefits to teachers who have been laid off. The implementation of this law is the responsibility of the Manpower Administration, U.S. Department of Labor.

Title I of the Act initially provided for the authorization of \$2,000,000,000 for fiscal 1975 (i.e., July 1, 1974, to June 30, 1975) to be used to provide public service jobs. In July 1975, extra funding in the amount of \$1,625,000,000 was authorized to extend the program through June 30, 1976. In general, funds are to be used for public employment programs in accordance with provisions of Title II of the Comprehensive Employment and Training Act of 1973, which authorized federal grants to state and local communities for various manpower programs. It is estimated that the Emergency Job Program will provide employment for approximately 300,000 persons. State employment agencies should be contacted for answers to questions regarding the various types of jobs and training that are available.

Title II of the Emergency Jobs and Unemployment Assistance Act provides cash benefits to teachers who are laid off and who are generally not eligible to receive benefits under the state's unemployment compensation statutes. Essentially, the program authorizes payment of benefits for up to thirteen weeks to unemployed workers who have exhausted their state benefits, and up to twenty-six weeks to other unemployed persons who are not normally covered. It is in the latter category the most laid-off teachers will be since only a small minority of states provide unemployment insurance coverage for teachers.³¹

To receive unemployment benefits the teacher must be either partially or totally unemployed as defined in the state unemployment compensation law. In addition, the individual must be able to work, available for work, and seeking work as required by the particular state law.

It must be noted that laid-off teachers should file promptly with their state employment agencies since benefits lost through waiting are not recoverable. It may be helpful in preventing unnecessary delay if a prospective applicant inquires whether a termination notice must accompany the claim or whether length of time on the previous job must be documented. These and other questions regarding eligibility should be directed to the state employment agency. Additionally, teachers should be aware that the continued receipt of unemployment benefits is generally contingent on the applicant's fulfillment of certain reporting requirements.

Food Stamp Program

The food stamp program provides another avenue of relief for laid-off teachers.³² The Food Stamp Act, 7 U.S.C., Sections 2011-2026, provides economic assistance to eligible households through the purchase of coupons which are, in turn, used to purchase food from authorized retail food stores. The implementation of this law is the responsibility of Food and Nutrition Service, Department of Agriculture.

Generally, all applicants for food stamps must meet nationwide standards of income and resources to be eligible for this form of assistance. Specifically, as of July 1, 1975, the maximum allowable monthly net income various households may receive and still participate in the program is as follows:

Household size	Maximum monthly net income receivable to be eligible to par- ticipate in program
1	\$215
2	\$300
3	\$427
4	\$540
5	\$640
6	\$740
7	\$833
8	\$926

An amount of \$73 per person may be added for each additional household member over eight.

Net income is arrived at by adding all monies which may be considered a gain or benefit, and by subtracting household expenses from that total. Income from wages, retirement income, disability benefits, veterans' benefits, unem-

ployment compensation, alimony, dividends, interest, etc., is computed in determining gain. Income of students under the age of eighteen is not included in this computation. Expenses for taxes, rent, court ordered alimony and support, medical bills, utility expenses, educational expenses, and mortgage payments are deducted from the total income to produce the net income figure.

Teachers should contact their local welfare agencies for application forms and further information regarding the program.

Permanent Unemployment Coverage

As noted above, only a small minority of states currently extend unemployment compensation coverage to all teachers. The NEA has lobbied, and will continue to do so, for passage of legislation which will extend permanent coverage to all teachers.³³ The proposed legislation is patterned after legislation enacted in 1971, which provided unemployment compensation coverage for teachers at institutions of higher education (25 U.S.C., Sections 3301-3309).

FOOTNOTES

¹Because many of the issues involved in a layoff incident to the consolidation of previously separate, segregated school systems are substantially different from those involved in a layoff based solely upon economic considerations, a specific and detailed discussion of layoffs as a result of desegregation is outside the scope of this document.

²For an analysis of the costs to the nation of inadequate education see the study of Henry M. Levin and Gerald G. Bachman, "The Effects of Dropping Out, the Cost to the Nation of Inadequate Education: A Report Prepared for the Select Committee on Equal Educational Opportunity of the United States Senate," excerpt from *Youth in Transition, Volume 3: Dropping Out, Problem or Symptom?* August 1972, Congress of the United States, Washington, D.C.

³Although for some purposes there are distinctions between tenure laws and fair dismissal laws, for the purpose of this paper, i.e., to analyze the substantive and procedural rights of teachers in an economic layoff, the two terms are considered synonymous and the term "tenure law" will generally encompass "fair dismissal" laws as well.

⁴In the context of labor relations the term "dismissal" is generally not applied to a separation from employment caused by economic considerations. However, since state statutes often use this term to apply to a separation for such reason, that term shall be used herein.

⁵See, for example, the tenure laws of Alabama, California, Colorado, Connecticut, Delaware, Hawaii, Kansas, Maine, Massachusetts, Michigan, Minnesota, Nevada, North Carolina, and Virginia.

⁶See, for example, the tenure laws of Kentucky, Ohio, Pennsylvania, and Rhode Island.

⁷See the tenure law of Missouri.

⁸See, for example, the tenure laws of Mississippi and Wyoming.

⁹See, for example, *Appeal of Walker*, 332 Pa. 488 2 A.2d 770 (1938); *Ehret v. School District of Borough of Kulpmont*, 333 Pa. 538, 6 A.2d 188 (1939); *Jones v. Holes*, 334 Pa. 538, 6 A.2d 102 (1939); *Beckett v. Roderick*, 251 A.2d 427 (Me. 1969). See also, Vacca and O'Brien, "Teacher Tenure: What Does It Mean?", *Peabody Journal of Education*, Vol. 47, No. 5 (Mar. 1970) at 280-285; Peterson, Rossmiller & Volz, , (*Harper & Row*, 1969) at 542; Nolte and Linn, *School Law for Teachers* (1963) at 124; Hamilton and Mort, *The Law and Public Education*, (2d ed., 1959).

¹⁰See, for example, the tenure law of Washington. See also, *Pierce v. Lake Stevens School District*, No. 4, 84 Wn. 2d 772, 529 P.2d 810 (1974).

¹¹See, for example, the tenure laws of Louisiana, Maryland, and Oklahoma.

¹²See *Lovelace v. Ingram*, 518 P.2d 1102 (Okla. 1973); *Bragg v. School District of Swarthmore*, 337 Pa. 363, 11 A.2d 152 (1940).

¹³See, *Sloyka v. D'Amico*, Civil Action No. 750215, (R.I., October 7, 1975).

¹⁴See tenure laws of California, Colorado, and Massachusetts. See also *Board of School Trustees v. O'Brien*, 190 A.2d 23 (Del. 1963); *Barnes v. Mendenhall*, 98 Ind. App. 229, 183 N.E. 556 (1932); *Seidell v. Board of Education of Ventnor City*, 110 N.J.L. 31, 164 A. 901 (1933); *Kaper v. Board of Trustees*, Docket 12, No. 362, First Judicial District, Platte County, Wyoming (1974); *Am Jur. Schools*, Sec. 139.

¹⁵*Thayer v. Anacortes School District*, 81 Wn. 2d 709, 504, P.2d 1130 (1972). But see *Peters v. South Kitsap School District*, 8 Wn. App. 809, 509 P.2d 67 (1973), where a lower court distinguished *Thayer* and held that seniority applies only if two teachers taught the same subject and that a tenured teacher could not bump another tenured teacher with less seniority holding a different teaching position.

¹⁶*Seidel v. Board of Education of Ventnor City*, *supra*.

¹⁷*American Association of University Professors v. Bloomfield College*, 129 N.J. Super. 249, 322 A.2d 846 (1974).

¹⁸In some cases, e.g., where a reduction in force occurs incident to school desegregation, special constitutional principles, based on the equal protection and due process clauses of the Fourteenth Amendment, may require that all teachers in the system be objectively compared in determining the order of layoff, and may give laid-off teachers certain recall rights in the event that vacancies arise. See, for example, *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969), *cert. denied* 396 U.S. 1032 (1970); *Rolfe v. County Board of Education*, 282 F. Supp. 192 (E.D. Tenn. 1966), *aff'd* 391 F.2d 77 (6th Cir. 1968); *North Carolina Teachers Association v. Asheboro City Board of Education*, 393 F.2d 736 (4th Cir. 1968).

¹⁹See, for example, *Hayes v. Orleans Parish School Board*, 225 S.2d 131 (La. Ct. App. 1969); *Pierce v. Lake Stevens School District No. 4*, *supra*.

²⁰See, *Wesley Steeby, et al. v. School District of City of Highland Park*, (Michigan Tenure Commission, No. 70-25, March 10, 1971). See also, *Powell v. Jones*, 305 N.E. 2d 166 (Ill. 1974).

²¹*Collins v. Wolfson*, 498 F.2d 1100 (5th Cir. 1974); *Johnson v. Board of Regents of the University of Wisconsin System*, 377 F. Supp. 227 (W.D. Wis. 1974), *aff'd* 510 F.2d 975 (7th Cir. 1975).

²²*Collins v. Wolfson*, *supra*.

²³*Johnson v. Board of Regents*, *supra*.

²⁴See, *Board of Education of Union Free School District No. 3 of Town of Huntington v. Associated Teachers of Huntington*, 30 N.Y.2d 122, 331 N.Y.S.2d 17 (Ct. App.

1972); see also, *Provide (R.I.) School Committee and Providence Teachers Union, Local 948*, 16 *Arbitration in the Schools* (AAA) 5 (1971).

²⁵If this approach is adopted, Section C should read as follows: "Layoffs will occur in inverse order of seniority, and no teacher with greater seniority may be laid off if a teacher with lesser seniority is retained." Section E(2), *infra*, should be changed by deleting the words "has displaced another teacher or. . ."

²⁶See, *Antonopoulou v. Beame*, 32 N.Y.2d 126, 296 N.E.2d 247 (1973).

²⁷In this connection, state law should be checked to see if it provides any rules governing credit for prior teaching experience in the same or other jurisdictions. It must be noted, however, that a statutory provision regarding prior experience as it relates to placement on the salary schedule is not necessarily determinative on the question of prior experience as it relates to the computation of seniority.

²⁸See, *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903 (1967).

²⁹If an association chooses to endorse this type of option, language setting forth a system for implementation should be substituted for Sections C and D of the Illustrative Article and appropriate changes should be made in Section E, *infra*, dealing with recall rights.

³⁰An examination of these programs is contained in a document entitled "Alternatives to Layoffs" by Edith T. Lynton based on conferences held by the New York City Commission on Human Rights, April 3-4, 1975, Eleanor Holmes Norton, Chairperson.

³¹At present only nine states and the District of Columbia provide mandatory unemployment coverage for teachers. The nine states are Connecticut, Hawaii, Kansas, Michigan, Minnesota, New Jersey, Ohio, Oregon, and Washington.

³²Employed teachers may also be eligible for assistance under this program.

³³Former NEA President James Harris testified in April 1975, in favor of coverage for teachers before a Subcommittee of the House Ways and Means Committee. He noted that of the 2.2 million teachers in the United States, only 414,220, or 16.4 percent, are currently covered by permanent unemployment compensation legislation. He further noted that in these critical economic times of an over-all tight job market, serious problems could arise for many among the remaining 83.6 percent of the profession who may be laid off and who are not covered by unemployment compensation legislation.

COUNSELOR ALERT TEAM



NATIONAL ASSOCIATION OF SCHOOL COUNSELORS
National Education Association
1201 16th Street, N.W.
Washington, D.C. 20036

WHAT

IS

C.A.T.?

The Counselor Alert Team is organized to serve counselors in crises situations as well as in assisting counselors through the local associations. It is available to provide expertise to the counselor who is encountering problems. These problems may be in areas of negotiations, grievances, legislation, relationships with administrators, employment opportunities and any pertinent areas that affects the counselor. The guidelines developed also include the concept of a Counselor Alert Hotline Information Service.

**WHY
DO
COUNSELORS
NEED
C.A.T.?**

NASC and NEA believe that local associations and school boards must negotiate written master contracts. Such contracts shall result from negotiation in good faith between associations and school boards, through representatives of their choosing, to establish, maintain, protect, and improve terms and conditions for professional service and other matters of mutual concern, including a provision for financial responsibility.

They encourage local affiliates to see that all its members are guaranteed a realistic opportunity for decisive participation in the establishment of instructional policies. Procedures for the resolution of impasse must be included. Grievance procedures shall be provided in the master contract with definite steps to appeal the application or interpretation of school board policies and agreements. Binding arbitration shall be a part of the grievance procedure.

EXAMPLES

FOR

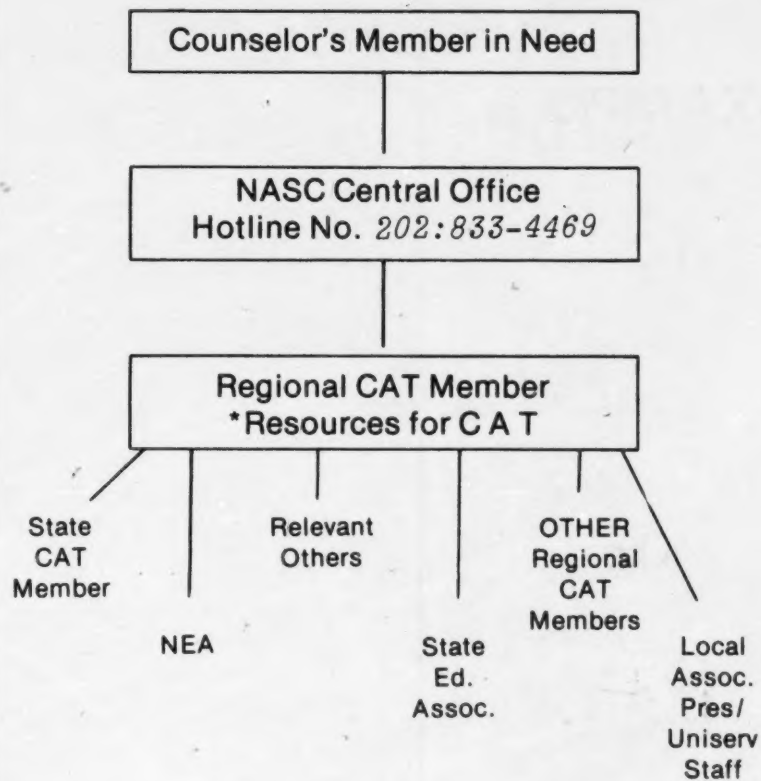
USE

OF

C.A.T.

- Drastic cuts in the Counseling program and elimination of specific level programs.
- Historically inadequate counseling program.
- Systematic reduction of counselor program.
- Inadequate counselor education programs.
- Counselor evaluation programs without counselor involvement.
- Job security.
- Violation of Rights: Contractual, statutory and constitutional.
- Unsatisfactory working conditions.

**HOW
DOES
C. A. T.
WORK?**



***PROCEDURE**

A counselor member in need would call collect, the National NASC Office: 202: 833-4469 and give all pertinent information to either the director or secretary. Immediately following this call, the regional CAT member will be contacted by phone and later by mail to give all pertinent information.

The CAT member would then contact the counselor member in need and proceed in assisting in order to resolve the particular problem.

C. A. T.

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